

No. 2234

IN THE
United States Circuit Court of Appeals
NINTH CIRCUIT

JOHN W. JOHNSON,

Appellant,

VS.

NORTH STAR LUMBER COMPANY, a corpora-
tion, et al,

Respondents.

Upon Appeal From the United States District
Court for the District of Oregon.

TRANSCRIPT OF RECORD.
RECEIVED

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CLERK.

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JOHN W. JOHNSON,

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NORTH STAR LUMBER COMPANY, a corpora-
tion, et al,

Respondents.

**Names and Addresses of Attorneys
upon this Appeal:**

For the Appellant:

Morgan & Brewer,
John Van Znate,

Hoquiam, Wash.
Spalding Bldg., Portland, Ore

For the Respondents:

Veazie & Veazie,

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*In the District Court of the United States for the
District of Oregon.*

Be It Remembered, That on the 2 day of March, 1911, there was duly filed in the Circuit Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit:

[Bill of Complaint.]

*In the Circuit Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,
Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

TO THE HONORABLE JUDGES OF THE CIR-
CUIT COURT OF THE UNITED STATES, IN
AND FOR THE DISTRICT OF OREGON:

The North Star Lumber Company, a corporation organized under the laws of the State of Minnesota and citizen of said State, having its principal office at Minneapolis, brings this its bill against John W. Johnson, Herman Winters and John Winters, all citizens of the State of Washington, residing at Hoquiam in said State, and inhabitants of said State of Washington.

First. Your orator shows unto your Honors, that the plaintiff in a private corporation, duly organized

and incorporated under the general laws of the State of Minnesota, on the 10th day of November, 1901; that the enterprise and business in which said corporation was organized to engage included among other things the buying and owning of lands in the State of Oregon; and that your orator has duly complied with all the laws of the State of Oregon with regard to the filing of articles, filing of reports and payment of license fees, and is licensed to do business in the State of Oregon.

Second. That on the 18th day of February, 1902, under the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the Sale of Timber Lands in the States of California, Oregon, Nevada and in Washington Territory," as extended to all the public land states by Act of August 4, 1892, the United States of America, bargained and sold to one Aaron Johnson, the Northwest quarter ($NW\frac{1}{4}$) of Section Ten (10), Township twenty-one (21) South, Range seven (7) West of the Willamette Meridian, situate in Douglas County, State of Oregon, pursuant to due proceedings in the United States Land Office at Roseburg, Oregon, and issued to the said Aaron Johnson a certificate of sale No. 9090; and thereafter such proceedings were had and taken in the said Land Office and in the General Land Office of the United States, in said matter, that on the 10th day of September, 1906, the United States of America issued to the said Aaron Johnson, its patent, whereby it granted and conveyed to him under the laws aforesaid, the tract of real property above described.

Third. That on the 21st day of May, 1904, the said Aaron Johnson, a bachelor, by his deed duly executed, acknowledged and attested so as to entitle the same to record under the laws of the State of Oregon, granted, bargained, sold and conveyed and confirmed the said real property unto one Andrew Johnson; which said deed was duly recorded on the 7th day of June, 1904, in Book 49 of Deeds, at page 158 of the records of Deeds of said Douglas County, State of Oregon.

Fourth. That on or about the 8th day of April, 1907, the said Andrew Johnson hereinbefore mentioned, and Emma Johnson, his wife, for a valuable consideration, made, executed and delivered to the said Aaron Johnson, their deed of conveyance whereby they granted, bargained, sold, conveyed and confirmed unto the said Aaron Johnson the real property hereinbefore described and mentioned; which said deed was duly executed, acknowledged and attested in such manner as to entitle the same to be recorded under the laws of the State of Oregon; and the same was on the 24th day of April, 1907, duly recorded in Book 57 of Deeds, at page 103, of the Deed Records of said Douglas County in said State.

Fifth. That on or about the 28th day of March, 1907, the said Aaron Johnson, made and delivered to the plaintiff corporation his certain warranty deed, whereby, in consideration of \$2,000.00 to the said Aaron Johnson paid by the plaintiff, the said Aaron Johnson granted, bargained, sold and conveyed to the plaintiff the said Northwest quarter of Section

ten (10), Township twenty-one (21) South, of Range seven (7) West of the Willamette Meridian; and in and by said deed of conveyance the said Aaron Johnson covenanted and warranted to and with the plaintiff that he was, at the time of the execution thereof, the owner in fee simple of the said bargained premises; that said deed was executed, acknowledged and attested in such manner as to entitle the same under the laws of Oregon to be recorded and that the same was on the 24th day of April, 1907, duly recorded in Book 57 of Deeds, at page 103, of the Deed Records of Douglas County, State of Oregon.

Sixth. That pursuant to the conveyances aforesaid and by and through the same, the plaintiff became and has been ever since the 28th day of March, 1907, the owner in fee simple of the said real property, to wit, the Northwest quarter (NW $\frac{1}{4}$) of Section ten (10) in Township twenty-one (21) South of Range seven (7) West of the Willamette Meridian, in the State of Oregon; and the plaintiff is now the owner thereof. That the said land is vacant and unoccupied land and is not at this time in the possession of the said defendants, or any of them, or of any other person.

Seventh. That the said defendants John W. Johnson, Herman Winters and John Winters, and each of them, falsely and without right, claim to have some interest in or right and title to the said real property; but that in fact the said defendants have no interest in nor right or title to the said real property, nor has any of the said defendants any right, title or interest there-

in or thereto.

Eighth. That the said real property, to wit, the Northwest quarter of Section ten (10) Township twenty-one (21) South, of Range seven (7) West of the Willamette Meridian in the State of Oregon, is of the value of not less than Twenty-five Hundred (\$2,500.00) Dollars.

And your orator prays that the said defendants, and each of them may be required to appear and answer and to set forth what interest if any they and each of them claim and assert in or to the said real property; that the plaintiff may be decreed to be the owner in fee simple thereof, free and clear from all claim of said defendants and each of them; that the said defendants and each of them may be restrained and enjoined from hereafter setting up any claim or title to the said lands, or any part thereof, or in any manner meddling therewith, or removing any timber or other product therefrom; that the title of the plaintiff to the said real property may be quieted against the alleged claims of the defendants and each of them and that the defendants and each of them may be decreed to have no interest in the said property or any part thereof.

To the end that your orator may obtain the relief to which it is justly entitled in the premises, it now prays the Court to grant unto it due process by subpoena directed to the said John W. Johnson, Herman Winters and John Winters, defendants hereinbefore named, requiring and commanding each of them to appear herein and answer, but not under oath, the same being expressly waived, the several allegations

in this your orator's bill contained; and for such other and further relief as in equity may be meet and proper.

NORTH STAR LUMBER COMPANY,

By F. F. Williams, Its Attorney.

James N. Davis, Veazie & Veazie,

Solicitors for Plaintiff.

A. L. Veazie, of Counsel.

[Endorsed]: Bill of Complaint. Filed March 2, 1911.

G. H. MARSH,

Clerk.

By J. W. Marsh, Deputy.

And afterwards, to wit, on the 12 day of May, 1911, there was duly filed in said Court, an Answer and Cross Bill, in words and figures as follows, to wit:

[Answer and Cross Bill.]

*In the Circuit Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,

Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

In answer to the said Bill, I, John W. Johnson, say as follows:

I.

In answer to the First Paragraph of said Complaint, I say that I have no knowledge or information as to matters and things therein alleged and I therefore deny the same and demand that the plaintiff be put upon strict proof thereof.

II.

I admit the allegations of Paragraph Two (2) of said Complaint.

III.

I admit that on or about the 21st day of May, 1904, Aaron Johnson, made and executed a Deed like unto the deed in Plaintiff's Complaint mentioned, but I deny that the said Andrew Johnson thereby acquired the equitable title to such property or any title to such property, as will more fully appear by my Cross Bill.

IV.

I admit that Andrew Johnson and Emma Johnson, his wife, made a deed like unto the deed mentioned in the Fourth Paragraph of said Complaint, which was thereafter, on or about the 24th day of April, 1907, duly recorded in the Deed Records of Douglas County, State of Oregon. I assert that I have no knowledge as to the time of execution or the date of delivery of such deed and I therefore demand strict proof of the allegations of such Complaint.

V.

I deny the allegations of Paragraph Five (5) of such Complaint.

VI.

I deny the allegations of the Sixth Paragraph of such Complaint, except that I admit that the said land is vacant and unoccupied land and is not at this time in the possession of any person.

VII.

For answer to the Seventh Paragraph of said Complaint, I admit that I claim to have some interest in or right and title to said property and I assert that I own the said property, absolutely and in fee simple and I deny that the plaintiff or the said defendants, Herman Winters and John Winters, or either of them, have any interest in or right or title to said property, all of which will more fully appear by my Cross Bill filed herein.

VII.

I admit the allegations of Paragraph Eight (8).

IX.

And for answer to all and every, of the allegations of such Complaint, I deny each and every of such allegations, except in so far as the same are heretofore specifically admitted.

CROSS BILL.

And for a Cross Bill, your orator, John W. Johnson, defendant above named, brings this his Cross Bill against the North Star Lumber Company, the plaintiff herein, claiming to be a corporation of the State of Minnesota and a citizen of said States.

I.

He alleges that he is a citizen of the State of Washington, residing at the City of Hoquiam in said State.

II.

He alleges that on the 18th day of February, 1902, under the provisions of the Act of Congress of June 3rd, 1878, entitled "An Act for the Sale of Timber Lands in the States of California, Oregon, Nevada and in Washington Territory," as extended to all the public land states by Act of August 4th, 1892, the United States of America, bargained and sold to one Aaron Johnson, the Northwest quarter (NW $\frac{1}{4}$) of Section Ten (10), Township Twenty-one (21) South, Range Seven (7) West of the Willamette Meridian, situate in Douglas County, State of Oregon, pursuant to the proceedings in the United States Land Office at Roseburg, Oregon, and issued to the said Aaron Johnson a certificate of Sale No. 9090; that thereafter such proceedings were had and taken in the said Land Office and in the General Land Office of the United States, in said matter; that on the 10th day of September, 1906, the United States of America issued to the said Aaron Johnson, its patent, whereby it granted and conveyed to him under the laws aforesaid, the tract of real property above mentioned.

III.

That thereafter, the said Aaron Johnson, made a deed like unto the deed set out in Paragraph Three of Plaintiff's Complaint, which purported to convey his interest to one Andrew Johnson, and that on or about the 8th day of April, 1907, the said Andrew Johnson and his wife, Emma Johnson, re-conveyed such property to the said Aaron Johnson by a Warranty Deed, whereby they granted, bargained, sold,

conveyed and confirmed unto the said Aaron Johnson the real property mentioned and described in Paragraph Two (2) of this Cross Bill. And in fact, as this your orator, is informed and believes, such conveyance was either fraudulent and made for the purpose of defrauding the creditors of Aaron Johnson, of whom, this your orator was one, or the same was intended as a mortgage to secure the payment of sums of money and was not in fact a conveyance of said Estate; but that whether this be true or not, by the deed of April 8th, 1907, the said Aaron Johnson became the owner in fee simple of such property heretofore described.

IV.

That on the 1st day of April, 1907, your orator commenced an action in the Circuit Court of Oregon, in Douglas County, in which he, your orator, John W. Johnson, was plaintiff and Aaron Johnson and Eline Engebritson were defendants, the same being Cause No....., in said Court upon a certain Promissory Note, made and executed by the said Aaron Johnson. That upon the said 1st day of April, A. D., 1907, he caused an Affidavit of Attachment to be made in and arising out of said action and entered into an Undertaking for Attachment in said action and that thereupon a writ of Attachment was issued out of said Court, and pursuant to said writ, one H. T. McClallen, Sheriff of said Douglas County, Oregon, duly attached all of the interest of the said Aaron Johnson in and to the property heretofore described, being the Northwest Quarter (NW $\frac{1}{4}$) of Section

Ten (10), in Township twenty-one (21) South of Range seven (7) West Willamette Meridian in Douglas County, Oregon. That thereafter, in due course, made return of said levy and that thereby the said Court acquired jurisdiction of such property and that as this Defendant is informed and believes and asserts the fact to be, such attachment rested upon said property, but that in any event, such attachment took effect and held such property upon the 8th day of April, 1907, thereafter when the Deed heretofore mentioned was made and delivered by the said Andrew Johnson and his wife, to the said Aaron Johnson, as heretofore set out.

V.

That thereafter, in due course, such cause came on regularly for trial and judgment in the Circuit Court of the State of Oregon, for Douglas County, and judgment was found and entered in favor of your orator, the plaintiff in that action, and the defendant herein, by the terms of which judgment it was adjudged that your orator have and recover a money judgment against the said Aaron Johnson and Eline Engebritson; and further, it was adjudged that the real property theretofore attached in said action, be sold in the manner prescribed by law, (said property being the same property involved in this action), and by the terms of which said judgment, it was held that such property was subject to the attachment levied April 1st, 1907.

VI.

That thereafter, in due course, an order of sale was

made and execution was issued and in due course a sale was had of the property, at which time and place, this your orator, purchased such property; and that thereafter, on the 12th day of October, 1908, by order of the said Court, such sale was confirmed.

VII.

That thereafter, on the 20th day of November, 1909, one B. Fenton, Sheriff of the County of Douglas, State of Oregon, pursuant to the order heretofore mentioned, made and executed his Sheriff's deed to the property heretofore described, which deed was regularly acknowledged and entitled to record and was thereafter recorded on the 20th day of November, 1909, in Book Sixty-six (66) of Deeds of Douglas County, State of Oregon, on pages 364 and 365. That by reason of the foregoing facts, your orator became and now is, the owner in fee simple of said real property, the Northwest Quarter (NW $\frac{1}{4}$), of Section Ten (10) in Township Twenty-one (21) South, of Range seven (7), West of Willamette Meridian in Douglas County, State of Oregon, and this your orator John W. Johnson, the defendant above named, is now the owner of. That the said plaintiff, the North Star Lumber Company, a corporation, falsely and without right, claims to be the owner and to have such interest in or right, or title to the said real property, but that in fact, the said North Star Lumber Company has no such interest, nor right, nor title to said real property, nor has any of the defendants any such right or title, save and except, this your orator, John W. Johnson.

VIII.

And your orator prays that he may be decreed to be the owner in fee simple of such property, free and clear from all claims of the said plaintiff, or of the claims of Herman Winters and John Winters, and that the said plaintiff and defendants mentioned, and each of them, may be restrained and enjoined from hereafter setting up any claim or title to said land or any part thereof or in any way meddling with or removing any timber or any other product therefrom. That the title of your orator, this defendant, to said real property may be quieted against the alleged claim of the plaintiff and the said defendants and each of them, and that said plaintiff and the said defendants, and each of them, may be decreed to have no interest in the said property or any part thereof.

JOHN W. JOHNSON,

Answering Defendant.

JOHN VAN ZANT,

Solicitor for Answering Defendant.

MORGAN & BREWER,

of Counsel for Answering Defendant.

UNITED STATES OF AMERICA,

Western District of Washington—ss.

John W. Johnson, being first duly sworn, says: That he is the Cross Complainant in the above Cross Bill; that he has read the same and that in so far as the same relates to his own acts, the same is true, and in so far as it relates to the acts of others, he believes this to be true.

JOHN W. JOHNSON.

Subscribed and sworn to before me this 10 day of May, A. D., 1911.

[Seal.]

L. A. BREWER,

Notary Public in and for the State of Washington,
residing at Hoquiam.

[Endorsed]: Answer and Cross Bill. Filed May 12, 1911.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 7 day of June, 1911,
there was duly filed in said Court, Amendments
to Original Bill of Complaint, in words and figures
as follows, to wit:

[Amendments to Original Bill of Complaint.]

*In the Circuit Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,
Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

TO THE HONORABLE JUDGES OF THE CIR-
CUIT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF OREGON:

The North Star Lumber Company, the plaintiff
above named, by leave of Court this day granted,
amends its bill of complaint so that the same shall
be responsive to the matters set up in the answer

of the defendant John W. Johnson, by adding thereto the following paragraphs, and by showing to the Court as follows, to wit:

Ninth. That the said defendant John W. Johnson alleges and pretends contrary to the truth, that on the first day of April, 1907, a writ of attachment was issued out of the Circuit Court of the State of Oregon, for Douglas County, in a certain action at law commenced by him in said Court, in which he was plaintiff and Aaron Johnson and Eline Engerbritson were defendants, and further alleges and pretends, contrary to the truth, that pursuant to said writ one H. T. McClallen, the Sheriff of said Douglas County, Oregon, attached all of the interest of the said Aaron Johnson in and to the real property hereinbefore described, to wit, the Northwest quarter (NW $\frac{1}{4}$) of Section ten (10) in Township twenty-one (21) South, of Range seven (7) West, of the Willamette Meridian, in Douglas County, Oregon, but plaintiff alleges the truth in this regard to be, that on the date of the issuance of the said writ and the levy thereof, neither of the said defendants in said action, Aaron Johnson nor Eline Engerbritson, had any right, title or interest whatsoever in or to the said real property, or any part thereof.

Tenth. That likewise the said defendant John W. Johnson alleges and pretends contrary to the truth, that thereby the said Circuit Court of the State of Oregon, for Douglas County, acquired jurisdiction of the real property involved in this suit; but the plaintiff alleges the truth in this regard to be that the

said real property at the time of the pretended attachment thereof and of the levy and return of said writ was the property of the plaintiff herein, and that no other person had any right, title or interest therein or thereto; and that neither of the said defendants Aaron Johnson nor Eline Engebritson was either the owner or the record owner thereof, or had any interest, real or apparent, therein or thereto; and plaintiff further alleges that neither of said defendants Aaron Johnson nor Eline Engebritson was in possession of or pretending or holding himself or herself out to be the owner of said real property at the time of the levy of said pretended attachment or the return thereof, or at the time of any subsequent proceedings in relation to said real property in said action at law.

Eleventh. That the said defendant John W. Johnson alleges and pretends, contrary to the truth, that thereafter said action commenced by him in the Circuit Court of the State of Oregon for the County of Douglas, against the said Aaron Johnson and Eline Engebritson, came on regularly for trial and judgment in said Circuit Court of the State of Oregon, for Douglas County; and further pretends and alleges, contrary to the truth, that in said cause and Court judgment was found and entered in favor of the said defendant John W. Johnson, the plaintiff therein, and further alleges and pretends, contrary to the truth, that by the terms of said judgment it was adjudged that the said defendant John W. Johnson should have and recover a money judgment against the said Aaron Johnson and Eline Engebritson, and further alleges

and pretends, contrary to the truth, that it was adjudged therein that the real property heretofore described, and which it had been intended to attach in said action, should be sold in the manner prescribed by law, the same being the property involved in this suit; and further alleges and pretends contrary to the truth, that by the terms of said judgment it was held that said property was subject to the pretended attachment levied thereon on the first day of April, 1907; but plaintiff alleges the truth in this regard to be that the said Circuit Court of the State of Oregon, for the County of Douglas, never acquired or had jurisdiction in said action, either of the person of either of the defendants therein or of the said real property, to render any judgment whatsoever; that no service of summons therein either personally or by publication, or otherwise, was ever made upon either of the persons named as defendants therein; that neither of said defendants was, at the time of the bringing of said action; found or served with summons in anywise within the State of Oregon; that a pretended service by publication of summons was made therein, but that said pretended service was wholly void and ineffective for the reasons following, to wit: That neither of the said defendants therein Aaron Johnson nor Eline Engebritson had any property within the State of Oregon and that it was never made to appear in said Court and cause by affidavit, to the satisfaction of the Court or Judge thereof or judge authorized to grant the order for publication of summons, that the defendants therein named could

not, after due diligence, be found within the State of Oregon; that no affidavit showing or attempting to show such fact was filed in said court and cause, or presented to the court therein, and that the court had no evidence before it in said cause by affidavit upon which to grant any order for service of summons by publication; that the only paper therein attempting or purporting to show by affidavit that said defendants, or either of them, could not be found within the State of Oregon was a certain pretended affidavit not sworn to before, nor attested by, any person authorized under the laws of the State of Oregon, to administer oaths or to take or authenticate affidavits, to wit, a certain pretended affidavit made by the said plaintiff in said action John W. Johnson, the defendant herein, in the County of Chehalis and State of Washington, at Hoquiam in said State, on the 7th day of September, 1907, before one Charles W. Hodgdon, a Notary Public for the State of Washington, whereas, by the law of the State of Oregon then in force, being Section 819 of Bellinger and Cotton's Annotated Codes and Statutes of Oregon, it is provided that:

An affidavit or deposition taken in another state of the United States or a territory thereof, the District of Columbia, or in a foreign country, otherwise than upon commission, must be authenticated as follows, before it can be used in this state:

1. It must be certified by a commissioner, appointed by the governor of this state to

take affidavits and depositions in such other state, territory, district or country; or

2. It must be certified by a judge of a court having a clerk and a seal, to have been taken and subscribed before him, at a time and place therein specified, and the existence of the court, the fact that such judge is a member thereof, and the genuineness of his signature shall be certified by the clerk of the court, under the seal thereof;

and the plaintiff alleges that said pretended affidavit was and is null and void and of no effect whatsoever in said cause; and the plaintiff further alleges that on the 9th day of September, 1907, a pretended order for publication of summons in said action was made by the Honorable G. W. Wonacott, County Judge for Douglas County, Oregon, but that no publication was in fact made thereon; and that no further or other order that summons be served by publication in said cause was made therein, but that a pretended order therefor, never signed by any judge, was filed in said court on or about the 11th day of October, 1907, which said pretended order was void and of no effect because not signed and because there was not at the time of the making thereof, or at all, filed or presented in said cause any affidavit showing that the said defendant could not after due diligence be found within the State of Oregon, the only paper pretending to be an affidavit showing said fact presented in said cause being the said pretended affidavit hereinbefore mentioned, which was filed therein on or about

the 9th day of September, 1907; and that the said court, at the time the said pretended order for publication was made, had before it no proof by affidavit whatsoever that the said defendants could not be found within said State of Oregon, at said time, or otherwise.

Twelfth. That thereafter and beginning on the 14th day of October, 1907, and for six successive weeks, a pretended summons in said action was published; and that no other service or attempted service of summons therein was ever made than said publication; which said service by publication, plaintiff alleges was wholly null and void by reason of the fact that the said court never had before it any evidence by affidavit that the defendants therein could not after due diligence be found within the State of Oregon, and for the other reasons aforesaid.

Thirteenth. That the said defendant John W. Johnson likewise alleges and pretends, contrary to the truth, that an order of sale was made and execution was issued and that a sale was had of the said real property in said action, in the Circuit Court of the State of Oregon, for the County of Douglas, and that the said defendant purchased the said real property on such sale and received a sheriff's deed therefor; but plaintiff alleges the truth in this regard to be that no valid attachment or judgment was ever made or given in said action; that neither the said Aaron Johnson nor the said Eline Engebritson had or owned, or appeared of record to have or own, or pretended or held himself or herself out as having owned

any right, title or interest whatsoever in or to the said real property, or any part thereof.

Fourteenth. That the said defendant John W. Johnson, contrary to the truth, alleges and pretends that by virtue of the said proceedings in said action at law, in the Circuit Court of the State of Oregon for the County of Douglas, and the said execution and sale, he acquired and has some right, title or interest in or to the said real property; but the plaintiff alleges the truth in this regard to be that said proceedings were and are wholly void and of no effect for the reasons hereinbefore stated, and that the said defendant John W. Johnson did not acquire and does not own any right, title or interest in or to the said real property by virtue thereof, or otherwise.

WHEREFORE, to the end that your orator may obtain the relief to which it is justly entitled in the premises, it now prays the Court that the said defendant John W. Johnson may be required to answer herein, but not under oath, the same being expressly waived, the several allegations in your orator's original bill of complaint, and the amendments thereto herein set forth; and that your orator have the relief prayed for in the original bill of complaint.

NORTH STAR LUMBER COMPANY,

By A. L. Veazie, Its Attorney.

Veazie & Veazie,

Solicitors for Plaintiff.

James N. Davis,

of Counsel.

[Endorsed]: Amendments to Original Bill of

Complaint. Filed June 7, 1911.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 23 day of June, 1911,
there was duly filed in said Court, Exceptions to
Amendments to Original Bill of Complaint, in
words and figures as follows, to wit:

[Exceptions to Amendments to Original Bill of Com-
plaint.]

*In the Circuit Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corpora-
tion,

Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

Comes now the defendant, John W. Johnson, and
excepts to that portion of the Plaintiff's amendments
to original bill of Complaint, commencing with the
words "but plaintiff" in line fifteen (15) on Page
three (3) in said amendments, including the remain-
der of such page and the whole of page four (4) and
including that portion of the Eleventh (11th) para-
graph contained on Page five (5) for impertinence,
and prays the Court that this portion be stricken, for
this, that under the decisions of Courts of the United
States, this Court will not enter upon an investigation
of defects and informalities in the Affidavit of Publi-

cation mentioned, made and committed by the Circuit Court of the State of Oregon in this collateral proceeding.

And this defendant likewise excepts and objects to the Twelfth (12th) Paragraph of said amendments for like impertinence and for the reasons heretofore set forth.

And this defendant likewise excepts and objects to Fourteenth (14th) Paragraph of said amendments for like impertinence and for the reasons heretofore set forth.

WHEREFORE, he prays that these matters may be inquired into by the Court or referred to a Master for inquiry and that upon such inquiry, the paragraphs and portions of paragraphs heretofore referred, be severally stricken.

MORGAN & BREWER,
Solicitors for Defendant.

John Van Zante,
of Counsel.

[Endorsed]: Exception. Filed June 23, 1911.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 21 day of August, 1911, there was duly filed in said Court, an Order in words and figures as follows, to wit:

[Order Overruling Exceptions to Amendments to Bill of Complaint.]

*In the Circuit Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY,

v.

JOHN W. JOHNSON, et al.

No. 3719.

August 21, 1911.

This cause was heard upon the exceptions filed by the defendants to the amendments to the bill of complaint herein, and was argued by Mr. Arthur L. Veazie, of counsel for the plaintiff, and by Mr. L. H. Brewer and Mr. John Van Zante, of counsel for said defendants; On Consideration Whereof, IT IS ORDERED AND ADJUDGED that said exceptions be, and the same are hereby, overruled; and on motion of said defendants IT IS FURTHER ORDERED that they be, and they are hereby, allowed fifteen days from this date in which to file an amended answer herein.

R. S. BEAN,

Judge.

And afterwards, to wit, on the 18 day of September, 1911, there was duly filed in said Court, a Cross Bill, in words and figures as follows, to wit:

[Cross Bill.]

*In the Circuit Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,

Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

TO THE HONORABLE JUDGES OF THE CIR-
CUIT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF OREGON:

John W. Johnson, one of the defendants in the original action in which this "Cross Bill" is filed, and a citizen of the State of Washington, brings this his Cross Bill against the plaintiff, the North Star Lumber Company, a corporation, and a citizen of the State of Minnesota, and he alleges and shows to the Court as follows:

I.

That this proceeding is one brought on the part of the North Star Lumber Company, a corporation, against this defendant and others to quiet the title to lands situated in Douglas County, State of Oregon and described as follows:

The Northwest Quarter (NW $\frac{1}{4}$) of Section Ten (10), in Township Twenty-one (21) South, of Range Seven (7) West, of the Willamette Meridian, in Douglas County, Oregon.

That such lands are vacant and unoccupied; that, as will hereinafter more particularly appear, this Cross Complainant is the owner in fee simple of the lands above described and brings this his Cross Bill to have his title thereto quieted as against the plaintiff, the North Star Lumber Company, a corporation.

II.

That on the 1st day of April, 1907, your orator, commenced an action in the Circuit Court of Oregon, in Douglas County, in which he, your orator, John W. Johnson, was plaintiff and Aaron Johnson and Eline Engebritson were defendants, the same being Cause No....., in said Court, upon a certain Promissory Note, made and executed by the said Aaron Johnson. That upon the said 1st day of April, A. D., 1907, he caused an Affidavit of Attachment to be made in and arising out of said action and entered into an undertaking for Attachment in said action and that thereupon a writ of attachment was issued out of said Court, and pursuant to said Writ, one H. T. McClallen, Sheriff of said Douglas County, Oregon, duly attached all of the interest of said Aaron Johnson in and to the property heretofore described, being the Northwest Quarter (NW $\frac{1}{4}$) of Section Ten (10), in Township Twenty-one (21) South, of Range Seven (7) West, Willamette Meridian, in Douglas County, Oregon. That thereafter, in due course, made return of said levy and that thereby the said Court acquired jurisdiction of such property and that as this Defendant, John W. Johnson, is informed and believes and asserts the fact to be, such attachment rested upon said property, but that in any event, such attachment took effect and held such property upon the 8th day of April, 1907, thereafter when the Deed heretofore mentioned was made and delivered by the said Andrew Johnson and his wife to the said Andrew Johnson and his wife to the said Aaron Johnson, as

heretofore set out.

III.

That thereafter, in due course such cause came on regularly for trial and judgment in the Circuit Court of the State of Oregon, for Douglas County and judgment was found and entered in favor of your Orator, John. W. Johnson, the plaintiff in that action, and the defendant herein, by the terms of which judgment it was adjudged that your orator have and recover a money judgment against the said Aaron Johnson and Eline Engebritson; and further, it was adjudged that the real property theretofore attached in said action, be sold in the manner prescribed by law, (said property being the same property involved in this action), and by the terms of which said judgment, it was held that such property was subject to the attachment levied April 1st, 1907.

IV.

That thereafter, in due course, an order of sale was made and execution was issued and in due course a sale was had of the property, at which time and place, this your orator, purchased such property; and that thereafter, on the 12th day of October, 1908, by order of the said court, such sale was confirmed.

V.

That thereafter, on the 20th day of November, 1909, one B. Fenton, Sheriff of the County of Douglas, State of Oregon, pursuant to the order heretofore mentioned, made and executed his Sheriff's deed to the property heretofore described, which deed was

regularly acknowledged and entitled to record and was thereafter recorded on the 20th day of November, 1909, in Book Sixty-six (66) of Deeds of Douglas County, on pages 364 and 365. That by reason of the foregoing facts, your orator became and now is, the owner in fee simple of said real property, the Northwest Quarter (NW $\frac{1}{4}$), of Section Ten (10), in Township Twenty-one (21) South of Range Seven (7), West of Willamette Meridian in Douglas County, State of Oregon, and this your orator, John W. Johnson, the defendant above named, is now the owner of. That the said plaintiff, the North Star Lumber Company, a corporation, falsely and without right, claims to be the owner and to have such interest in or right, or title to the said real property, but that in fact, the said North Star Lumber Company, a corporation, has no such interest, nor right nor title to said real property, nor have any of the defendants any such right or title, save and except, this your orator, John W. Johnson.

VI.

And your orator, this Cross Complainant, prays that said plaintiff may be required to appear and answer and to act forth what interest, if any, it claims or asserts in or to the said real property involved, and that this Cross Complainant may be decreed to be the owner in fee simple of such property, free and clear from all claims of the said plaintiff and that said plaintiff may be restrained and enjoined from hereafter setting up any claim or title to said lands or any

part thereof, or in any way meddling with or removing any timber or any other product therefrom. That the title of your Orator, this Cross Complainant, to said real property may be quieted against the alleged claim of the plaintiff and that the said plaintiff may be decreed to have no interest in and to said property or any part thereof. And to that end your Orator prays the Court to grant him process, directing the said North Star Lumber Company, a corporation, requiring and commanding it to appear herein and answer to this Cross Bill, but not under oath, the same being expressly waived; and for such other and further relief as in this equity may be meet and proper.

JOHN W. JOHNSON,

Cross Complainant.

MORGAN & BREWER,

Solicitors for Cross Complainant.

JOHN VAN ZANTE,

of Counsel for Cross Complainant.

[Endorsed]: Cross Bill. Filed Sept. 18, 1911.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 18 day of September, 1911, there was duly filed in said Court, an Answer, in words and figures as follows, to wit:

[Answer to Bill of Complaint and to Amendments
Thereeto.]

*In the Circuit Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,
Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,
Defendants.

Comes now, John W. Johnson, one of the defendants in the above suit and for answer to original Bill says:

I.

In answer to the First Paragraph of said Complaint, I say that I have no knowledge or information as to matters and things therein alleged and I therefore deny the same and demand that the plaintiff be put upon strict proof thereof.

II.

I admit the allegations of Paragraph Two (2) of said Complaint.

III.

I admit that on or about the 21st day of May, 1904, Aaron Johnson, made and executed a Deed like unto the Deed in Plaintiff's Complaint mentioned, but I deny that the said Andrew Johnson thereby acquired the equitable title to such property or any title to such property, as will more fully appear by my Cross Bill.

IV.

I admit that Andrew Johnson and Emma Johnson, his wife, made a Deed like unto the deed mentioned in the Fourth Paragraph of said Complaint, which

was thereafter, on or about the 24th day of April, 1907, duly recorded in the Deed Records of Douglas County, State of Oregon. I assert that I have no knowledge as to the time of execution or the date of delivery of such deed and I therefore demand strict proof of the allegations of such complaint.

V.

I deny the allegations of Paragraph Five (5) of such Complaint.

VI.

I deny the allegations of the Sixth Paragraph of such Complaint, except that I admit that the said land is vacant and unoccupied land and is not at this time in the possession of any person.

VII.

For answer to the Seventh Paragraph of said Complaint, I admit that I claim to have some interest in or right and title to said property and I assert that I own the said property, absolutely and in fee simple and I deny that the plaintiff or the said defendants, Herman Winters and John Winters or either of them, have any interest in or right or title to said property, all of which will more fully appear by my Cross Bill filed herein.

VIII.

I admit the allegations of Paragraph Eight (8).

IX.

And for answer to all and every, of the allegations of such Complaint, I deny each and every of such allegations, except in so far as the same are heretofore specifically admitted.

And in answer to the Amendments to Original Bill, he says:

In answer to the Ninth Paragraph of said Amendments, he says that in truth and in fact, on the First day of April, 1907, a Writ of Attachment was issued out of the Circuit Court of the State of Oregon, for Douglas County, in a certain action at Law commenced by him in said Court in which he was plaintiff and Aaron Johnson and Eline Engebritson were defendants, and that in truth and in fact, pursuant to said Writ, one H. T. McClallen, the Sheriff of Douglas County, Oregon, attached all of the interest of the said Aaron Johnson in and to the real property heretofore described, to-wit:

The Northwest Quarter ($NW\frac{1}{4}$) of Section Ten (10), in Township Twenty-one (21), South of Range Seven (7) West, of the Willamette Meridian, in Douglas County, Oregon,

and that in truth the said Aaron Johnson was the owner of said property, in this that on the 18th day of February, 1902, under the provisions of the Act of Congress of June 3rd, 1878, entitled "An Act for the Sale of Timber Lands in the States of California, Oregon, Nevada and in Washington Territory," as extended to all the public land states by Act of August 4th, 1892, the United States of America, bargained and sold to one Aaron Johnson, the Northwest Quarter ($NW\frac{1}{4}$) of Section Ten (10), Township Twenty-one (21), South of Range Seven (7) West, of the Willamette Meridian, situate in Douglas County,

State of Oregon, pursuant to due proceedings in the United States Land Office at Roseburg, Oregon, and issued to the said Aaron Johnson a certificate of Sale No. 9090; that thereafter such proceedings were had and taken in the said Land Office and in the General Land Office of the United States, in said matter, that on the 10th day of September, 1906, the United States of America issued to the said Aaron Johnson, its patent, whereby it granted and conveyed to him under the laws aforesaid, the tract of real property above described, and that he thereby acquired said property; and further, that thereafter, the said Aaron Johnson made a deed like unto the deed set out in Paragraph Three of Plaintiff's Complaint, which purported to convey his interest to one Andrew Johnson, and that on or about the 8th day of April, 1907, the said Andrew Johnson and his wife, Emma Johnson, re-conveyed such property to the said Aaron Johnson by a Warranty Deed, whereby they granted, bargained, sold, conveyed and confirmed unto the said Aaron Johnson the real property mentioned and described in Paragraph Two (2) of this Cross Bill. And in fact, as this your orator, John W. Johnson, is informed and believes, such conveyance was either fraudulent and made for the purpose of defrauding the creditors of Aaron Johnson, of whom, this your orator was one, or the same was intended as a mortgage to secure the payment of sums of money and was not in fact a conveyance of said Estate; but that whether this be true or not, by the deed of April 8th, 1907, the said Aaron Johnson became the owner in fee simple of such prop-

erty heretofore described.

And the defendant, John W. Johnson, alleges that in truth and in fact, the said Circuit Court of the State of Oregon, for Douglas County, thereby acquired jurisdiction of the real property involved in this suit, and of the subject matter of the action in the Circuit Court of the State of Oregon, for Douglas County, and he denies that the property referred to was the property of the Plaintiff, and alleges that if the plaintiff had, at that time acquired any interest in said property, nevertheless, such interest was represented by an unrecorded deed and that under the laws of the State of Oregon, the attachment levied by him took precedence over such unrecorded deed in this that, the laws of the State of Oregon, Section 302, of Volume I, of Bellinger and Cotton's Annotated Codes and Statutes of the State of Oregon, provide as follows:

"From the date of the attachment until it be discharged or the writ executed, the plaintiff, as against third persons, shall be deemed a purchaser in good faith and for a valuable consideration of the property, real or personal, attached, subject to the conditions prescribed in the next section as to real property. Any person, association, or corporation mentioned in subdivision 3 of Section 301, from the service of a copy of the writ and notice as therein provided, shall, unless such property, stock, or debts be delivered, transferred, or paid to the Sheriff, be liable to the plaintiff for the amount thereof until the attachment be discharged or any judgment recovered by him be satisfied (L. 1862; D. Cd. No. 148; H. C. No. 150.)"

and that thereby this answering defendant became a purchaser in good faith and for valuable consideration as of date of April 1st, 1907.

For answer to Paragraph Ten (10), he alleges that in truth and in fact, the Circuit Court of the State of Oregon, for Douglas County, acquired jurisdiction of the real property involved in this suit and that as heretofore alleged, he became by said attachment, the bona fide owner for value.

In answer to the Eleventh Paragraph, he alleges and affirms, that after said attachment, said action commenced by him in the Circuit Court of the State of Oregon, in the County of Douglas, against the said Aaron Johnson and Eline Engebritson, came on regularly for trial, and trial and judgment were had in said Circuit Court and judgment was found and entered in favor of this Defendant, John W. Johnson, the Plaintiff therein, and that by the terms of said judgment, it was adjudged that this defendant, John W. Johnson, should have and recover a money judgment, and did recover a money judgment, and that it was adjudged therein that the real property involved and which had been attached in said action, should be sold, and that the same was regularly sold to this defendant, John W. Johnson, the plaintiff in that action, and that in truth it was held by the terms of said judgment, that the property involved was held subject to the attachment levied on the 1st day of April, 1907. That in truth and in fact, the Circuit Court of the State of Oregon, for the County of Douglas, had jurisdiction of the subject matter of the action and of

the real property involved herein, and that due and regular service of the summons was made by publication as provided by the laws of the State of Oregon, and that service was valid and effective; that such service was had by publication and after that it was made to appear in the said Court and Cause to the entire and complete satisfaction of the Court; that the defendants therein named, could not, after due and diligent search, be found within the State of Oregon and that the Court in that action so specifically found, and that thereafter, publication of the summons was had by order of the Circuit Court of the State of Oregon for Douglas County; that thereafter, said action proceeded regularly to judgment and sale, as heretofore alleged and thereby this Defendant, John W. Johnson acquired the lands heretofore described, in fee simple and free from the claims of the plaintiff in this action or any other persons, whomsoever.

WHEREFORE, this defendant, prays that the plaintiff herein be held and found to have no interest in and to said real property; that he have his costs and disbursements herein and that he have affirmative relief, quieting his title to said real property as prayed for in his Cross Bill filed in this action.

JOHN W. JOHNSON,

Answering Defendant.

MORGAN & BREWER,

Solicitors for Answering Defendant.

JOHN VAN ZANTE,

of Counsel for Answering Defendant.

[Endorsed]: Answer. Filed Sept. 18, 1911.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 30 day of September, 1911, there was duly filed in said Court, a Replication, in words and figures as follows, to wit:

[Replication.]

*In the Circuit Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,

Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

Replication of Plaintiff in above cause to answer
of John W. Johnson, Defendant.

This replicant, saving and reserving all advantages of exception to the manifold insufficiencies of said answer, for replication thereto saith that it will aver and prove its said bill to be true and sufficient, and that the said answer is untrue and insufficient.

WHEREFORE it prays relief as in said bill set forth.

JAMES N. DAVIS and
VEAZIE & VEAZIE,

Solicitors for Plaintiff.

[Endorsed]: Replication to Answer. Filed September 30, 1911.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 30 day of September, 1911, there was duly filed in said Court, an Answer to Cross Bill, in words and figures as follows, to wit:

[Answer to Cross Bill.]

*In the Circuit Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,

Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

The answer of North Star Lumber Company, the plaintiff, to the cross bill of the defendant John W. Johnson.

The plaintiff North Star Lumber Company, saving and reserving unto itself the benefit of all the exceptions to the errors and imperfections in said cross bill contained, for answer to so much thereof as it is advised it is necessary or material for it to answer unto, does aver and say:

I.

That it is not true that the said cross complainant John W. Johnson is the owner in fee of the said lands

described in the complaint herein and in said cross complaint.

II.

Plaintiff admits that on the first day of April, 1907, said defendant John W. Johnson attempted to commence an action in the Circuit Court of the State of Oregon, for Douglas County, in which he was plaintiff and Aaron Johnson and Eline Engebritson were defendants, upon a promissory note alleged to have been made and executed by said Aaron Johnson; but plaintiff denies that said action was ever in fact commenced, for the reason that no service of summons was ever had or made therein upon either of the defendants in said action, and further alleges that on the date of the issuance of the pretended writ of attachment and the levy thereon issued in said cause, the said Aaron Johnson had no right, title or interest whatsoever in or to the said real property or any part thereof; and plaintiff denies that thereby, or otherwise, the said Court acquired jurisdiction of the said property, and denies that the said property was thereby or otherwise attached, and denies that said attachment took effect or held said property on the 8th day of April, 1907, or any time.

III.

And plaintiff denies that said cause came on regularly or at all for trial or judgment in the Circuit Court of the State of Oregon, for Douglas County, and denies that judgment was found or entered in favor of the said cross complainant John W. Johnson, by the terms whereof it was adjudged that the said

John W. Johnson should have and recover a money judgment against the said Aaron Johnson, or against the said Eline Engebritson, or otherwise, or at all, and denies that in said action it was adjudged that the said real property should be sold or was held that said property was subject to the pretended attachment levied thereon; but plaintiff, the North Star Lumber Company, alleges the truth in this regard to be, that the said Circuit Court of the State of Oregon, for Douglas County, never acquired or had jurisdiction in said action, either of the person of either of the defendants therein or of the said real property, to render any judgment whatsoever; that no service of summons therein, either personally or by publication, or otherwise, was ever made upon either of the said persons named as defendants therein; that neither of said defendants was at the time of the bringing of said action found or served with summons in anywise within the State of Oregon, or ever appeared or answered in said action; that a pretended service by publication of summons was made therein, but that said pretended service was wholly void and ineffective for the reasons following, to wit: That neither of the defendants therein, Aaron Johnson or Eline Engebritson, had any property within the State of Oregon, and that it was never made to appear in said Court and cause by affidavit to the satisfaction of the Court or Judge thereof, or judge authorized to grant the order for publication of summons, that the defendants therein named could not, after due diligence, be found within the State of Oregon; that no affidavit show-

ing or attempting to show such fact was filed in said Court and cause or presented to the Court therein, and that the Court had no evidence before it in said cause by affidavit upon which to grant any order for service of summons by publication; that the only paper therein attempting or purporting to show by affidavit that said defendants, or either of them, could not be found within the State of Oregon was a certain pretended affidavit not sworn to before, nor attested by, any person authorized under the laws of the State of Oregon to administer oaths or to take or authenticate affidavits, to wit, a certain pretended affidavit made by the plaintiff in said action, John W. Johnson, the defendant herein, in the County of Chelalis, and State of Washington, at Hoquiam in said State, on the 7th day of September, 1907, before one Charles W. Hodgdon a Notary Public for the State of Washington, whereas by the law of the State of Oregon then in force, being Section 819 of Ballinger and Cotton's Annotated Codes and Statutes of Oregon, it is provided that

An affidavit or deposition taken in another state of the United States or a territory thereof, the District of Columbia, or in a foreign country, otherwise than upon commission, must be authenticated as follows, before it can be used in this state:

1. It must be certified by a commissioner appointed by the governor of this state to take affidavits and depositions in such other state, territory or district or country; or

2. It must be certified by a judge of a court having a clerk and a seal, to have been taken and subscribed before him, at a time and place therein specified, and the existence of the court, the fact that such judge is a member thereof, and the genuineness of his signature shall be certified by the clerk of the court, under the seal thereof;

and the plaintiff alleges that said pretended affidavit was and is null and void and of no effect whatsoever in said cause; and the plaintiff further alleges that on the 9th day of September, 1907, a pretended order for publication of summons in said action was made by the Honorable G. W. Wonacott, County Judge for Douglas County, Oregon, but that no publication was in fact made thereon; and that no further or other order that summons be served by publication in said cause was made therein, but that a pretended order thereof, never signed by any judge, was filed in said court on or about the 11th day of October, 1907, which said pretended order was void and of no effect because not signed, and because there was not at the time of the making thereof, or at all, filed or presented in said cause any affidavit showing that the said defendants could not after due diligence be found within the State of Oregon, the only paper pretending to be an affidavit showing said fact presented in said cause being the said pretended affidavit hereinbefore mentioned, which was filed therein on or about the 9th day of September, 1907; and that the said court, at the time the said pretended order for publication

was made, had before it no proof by affidavit whatsoever that the said defendants could not be found within said State of Oregon at said time, or otherwise. That thereafter and beginning on the 14th day of October, 1907, and for six consecutive weeks, a pretended summons in said action was published; and that no other service or attempted service of summons therein was ever made than said publication, which said service by publication, plaintiff alleges was wholly null and void by reason of the fact that the said court never had before it any evidence by affidavit that the defendants therein could not, after due diligence, be found within the State of Oregon, and for the other reasons aforesaid.

IV.

Plaintiff denies that thereafter, in due course, or at all, an order of sale was made, and denies that an execution was issued and in due course a sale was had of the property involved herein, and denies that at said time and place, or at any time or at all, the defendant John W. Johnson, cross complainant herein, purchased said real property, or that such sale was confirmed; but plaintiff, answering said cross bill, alleges the truth in this regard to be, that no valid attachment or judgment was ever made or given in said action; that neither the said Aaron Johnson nor the said Eline Engebritson, had or owned, or appeared of record to have or own, or pretended or held himself or herself out as having or owning any right, title or interest whatsoever in or to the said real property, or any part thereof, at the time of either or any of

said pretended proceedings.

V.

Plaintiff admits that B. Fenton, Sheriff of said County of Douglas, State of Oregon, did make and issue a pretended sheriff's deed of the said real property, and that the same was recorded; but denies that by reason thereof, or any of the foregoing facts, or at all, the said defendant and cross complainant John W. Johnson became or now is the owner in fee simple or at all of the said real property, the Northwest quarter of Section ten (10), in Township Twenty-one (21) South, Range Seven (7) West, of the Willamette Meridian, in Douglas County, State of Oregon, or any part thereof, and denies that the plaintiff, the North Star Lumber Company, falsely or without right claims to be the owner thereof, and denies that the said plaintiff has no interest, nor right, nor title to the said real property; but plaintiff alleges that it is the owner thereof in fee simple as alleged in the bill of complaint herein.

And having thus fully made answer to said cross bill, plaintiff prays for the relief demanded in the prayer of the original bill herein; and for such other and further relief as in equity may be meet and proper; and that the said cross bill may be dismissed.

VEAZIE & VEAZIE,

Solicitors for Plaintiff.

[Endorsed]: Answer to Cross Bill. Filed September 30, 1911.

G. H. MARSH,

Clerk.

And afterwards, to wit, on Friday, the 15 day of March, 1912, the same being the 15 Judicial day of the Regular March, 1912, Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Minutes of Trial—March 15, 1912.]

*In the District Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER CO.,

v.

JOHN W. JOHNSON, et al.

No. 3719.

March 15, 1912.

This cause came on regularly at this time for final hearing; James N. Davis and A. L. Veazie appearing on behalf of complainant and F. L. Morgan and John Van Zant appearing on behalf of defendant; and thereupon F. F. Williams is sworn and examined and documents introduced on behalf of complainants and thereupon defendants move to dismiss and thereupon argument ordered deferred until close of evidence and thereupon J. W. Johnson sworn and examined and documents introduced on behalf of defendants and thereupon defendant rests and thereupon, the evidence being closed, after argument of counsel for respective parties cause ordered submitted and thereupon it is Ordered that defendants file and serve their brief within 7 days from the date hereof and that complainant file its reply brief within 7 days from

date of service of defendants' brief.

And afterwards, to wit, on the 15 day of April, 1912, there was duly filed in said Court, an Opinion, in words and figures as follows, to wit:

[Opinion of the Court.]

*In the District Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,

Plaintiff,

vs.

JOHN W. JOHNSON, et al,

Defendant.

No. 3719

JAMES N. DAVIS and VEAZIE & VEAZIE, Attorneys for Plaintiff.

MORGAN & BREWER, Attorneys for Defendants.

BEAN, D. J.

This is a suit to quiet title to certain real property in this state which, it is alleged in the bill and admitted by the answer, is vacant unoccupied land and not in the possession of either party to the suit, or any other person. Both parties deraign title through Aaron Johnson, the plaintiff by deed from Aaron Johnson to Andrew Johnson dated May 21, 1904, and recorded June 7th, of the same year; deed from Andrew to Aaron of date April 8, 1907, and recorded the 24th of the same month; a deed from Aaron to plaintiff of date February 21, 1907, and recorded April

24th. The defendant claims through a sheriff's deed, made in pursuance of a sale under an execution issued on a judgment recovered in the state court, by the defendant against Aaron Johnson, a non-resident of the state, in an action at law commenced on April 1, 1907, and the attachment of the property in suit on that date as the property of Aaron, and the subsequent service of summons upon him by publication. The defendant by cross bill affirms the validity of the judgment, sale thereunder, and the sheriff's deed, and asks to have his title quieted. It thus appears that the plaintiff is the owner of the property in controversy unless the defendant acquired title through the sheriff's deed. The plaintiff insists that the judgment under which the defendant claims is void and of no effect because (1) the defendant therein, Aaron Johnson, had no title or interest in the property attempted to be seized under the attachment at the time of the levy but that the title was then in Andrew Johnson. (2) That jurisdiction of Aaron Johnson in the action brought against him by the defendant in the state court was never acquired because the affidavit for an order for the publication of summons in such action was of no effect since it was made outside of the state and not before any officer or person authorized by the law to take the same. The defendant challenges the jurisdiction of the court to determine any of these questions because (1) the plaintiff has a plain, speedy and adequate remedy at law by an action in ejectment. And (2) that the federal court will not assume jurisdiction to declare a judgment or

decree of a state court void for error or irregularity appearing on its face.

First: At common law an action in ejectment could be brought only against some person in the actual possession of the property, but under the Oregon Statutes (Sec. 325, Lord's Ore. Laws) an action to recover real property, which takes the place in this state of an action of ejectment, may be brought against a person acting as the owner thereof where the property is not in the actual possession of anyone. It is averred in the bill, admitted in the answer and conceded at the hearing that the land in controversy is vacant and there is no evidence or claim that it has ever been improved or cultivated by the defendant or that he has exercised any control over it, and therefore he was not acting as the owner within the meaning of the section referred to, and a suit to determine an adverse claim could be maintained in a court of equity under the Oregon Statute. *McLeod v. McLeod*, 43 Ore. 260.

Second. It may be conceded that a federal court has not jurisdiction at the suit of a party to vacate or annul a judgment or decree of a state court for error or irregularity appearing on the face of the record. (*Natl. Surety Co. vs State Bank*, 120 Fed. 593.) But it has jurisdiction to entertain a bill to quiet title to real property or remove a cloud therefrom where the requisite diversity of citizenship exists. This has been, from time immemorial, one of the well known functions of a court of equity where the remedy at law was inadequate and in such a suit the court may

inquire into the jurisdiction of a state court to render a judgment or decree which is relied upon and brought before the court by a party claiming the benefit thereof. (*Holland v. Challen*, 110 U. S. 15; *Sharon vs. Tucker*, 144 U. S. 533; *American Assn. vs. Williams*, 166 Fed. 17; *Bigelow vs. Chatterton*, 51 Fed. 614; *Sanders vs. Devereaux*, 60 Fed. 311; *Williamson vs. Berry*, 8 How. 495-540.) The statutes of Oregon authorize any person claiming an interest in real estate not in the actual possession of another to maintain a suit against another who claims an interest or estate therein adverse to him, for the purpose of determining such conflicting or adverse claim. (Sec. 516 Lord's Ore. Laws.) And this right may be asserted and enforced in the federal court where there exists the requisite diversity of citizenship or some other ground of equitable jurisdiction, and where it is alleged and proved that both parties are out of possession. (*Holland v. Challen supra*; *Whitehead v. Shattuck*, 138 U. S. 146; *Wehrman vs. Conklin*, 155 U. S. 314.)

Coming then to the merits, and passing the question as to the validity of the attachment in the action under which the defendant claims and assuming that it was sufficient to authorize the court to proceed in the action, it did not confer jurisdiction to render any judgment which could be enforced against the attached property. The attachment was merely auxiliary to the main action and had nothing to do with the merits of the case or the jurisdiction of the court to try and determine it. By the ruling in *Pennoyer*

vs. Neff (95 U. S. 714) proceeding in an action against a non-resident is ineffectual unless some property of the defendant is brought within the control of the court and subject to its disposition by writ of attachment, but the right in Oregon to adjudicate thereon is acquired not by the attachment and publication thereof, as was the case in *Cooper vs. Reynolds* (10 Wall. 308) but by the service of summons upon the defendant either in person or by publication. It is the service of the summons and not the seizing of his property that gives the court jurisdiction to establish by its judgment a demand against a non-resident and to subject his property, brought within its control by attachment, to the payment of such demands. (*Bank of Colfax vs. Richardson*, 34 Ore, 518.)

It appears from the record that the defendant in the case of *Johnson vs. Johnson* was a non-resident of the state. Service of summons was attempted to be made upon him by publication. Publication, under the Oregon Statute can be legally had only by an order of the court or judge thereof. No such order can be made unless the requisite facts are made to appear to the satisfaction of the court or judge by affidavit. (Sec. 56 Lord's Ore. Laws.) The affidavit is therefore an essential requisite to a valid order for a publication of summons. Without it there is no foundation upon which to base such an order. There is nothing upon which the court is authorized to act. In short there is no jurisdiction to, act at all. *Galpin vs. Page*, 18 Wall. 350-359-372; *Cohen v. Portland Lodge B. P. O. E.*, 152 Fed. 375; 144 Cal. 786. Now, the af-

fidavit upon which the publication is alleged to have been founded in this case was made in the state of Washington before a Notary Public of that state, and was not otherwise authenticated. The Statute of Oregon then in force (Sec. 819 B. & C. An. Laws), required that an affidavit taken in another state, before it can be used here must be certified by a Commissioner appointed by the governor to take affidavits and depositions in such state, or by a court having a seal and clerk. The affidavit in question was not so authenticated. It was therefore a nullity, and the order of publication based thereon was ineffectual for any purpose. (*Fawcett v. Chi. RR Co.*, 113 Tenn. 246; 81 S. W. 839; *Scull v. Alten*, 16 N. J. Law, 147; *Murdock vs. Hilyer*, 45 No. Ao. 292; *Brunswick Hdw. Co. vs. Brigham*, 33 S. E. 56.) It is claimed, however, by the defendant that this is a collateral attack upon the judgment and since it recites that it appears to the satisfaction of the court that the defendant was "duly served with summons" it will be presumed in this proceeding that proper service was in fact made although not shown by the record, but no such presumption will be indulged in where, as here the court was proceeding against a party not within its territorial jurisdiction upon a service by publication, and the record discloses that an essential step necessary to such service, was entirely omitted. *Galpin v Page*, *supra*.

I conclude therefore that the judgment under which the defendant claims is void and that the plaintiff is entitled to a decree as prayed for.

[Endorsed]: Opinion. Filed Apr. 15, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 17 day of April, 1912,
there was duly filed in said Court, a Decree, in
words and figures as follows, to wit:

[Decree.]

*In the District Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corpora-
tion,

Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

This cause came on to be heard at this term and was argued by counsel; the defendants Herman Winters and John Winters having been duly served with process by subpoena and having made default herein, the plaintiff and the defendant John W. Johnson, appearing by their Counsel; and thereupon, upon consideration thereof:

IT WAS ORDERED, ADJUDGED AND DECREED as follows, to wit:

That the plaintiff North Star Lumber Company, a corporation under the laws of the State of Minnesota, was at the time of bringing this suit and is now the owner in fee simple of that certain real property, situate in Douglas County, State of Oregon,

known and described as the Northwest quarter (NW¼) of Section ten (10) Township twenty-one (21) South, Range seven (7) West of the Willamette Meridian; that the plaintiff holds and owns the said real property free and clear from all claim of said defendants and each of them; and that the said defendants and each of them be and they are hereby restrained and enjoined from hereafter setting up any claim or title to the said lands, or any part thereof, or any lien upon the same, or any part thereof, and from in any manner meddling therewith or removing any timber or product therefrom; and the title of the plaintiff to the said real property is hereby quieted against the alleged claims of the defendant John W. Johnson and of each of the other defendants herein, and that the said defendant John W. Johnson in particular is decreed to have no interest in the said real property, or any part thereof.

And that certain deed bearing date the 20th day of November, 1909, made and executed by B. Fenton, Sheriff of the County of Douglas, State of Oregon, and recorded on the 20th day of November, 1909, in Book 66 of Deeds of Douglas County, on pages 364 and 365, purporting to convey the said real property to the said defendant John W. Johnson, is hereby canceled and annulled and held for naught.

AND IT IS FURTHER ORDERED AND ADJUDGED, that the plaintiff North Star Lumber Company do have and recover of and from the defendant John W. Johnson its costs and disbursements herein, taxed at \$.....

Dated at Portland, Oregon, this 17 day of April, 1912.

R. S. BEAN,
Judge.

[Endorsed]: Decree. Filed Apr. 17, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 14 day of November, 1912, there was duly filed in said Court, Testimony and Exhibits, in words and figures as follows, to wit:

[Testimony and Exhibits.]

*In the District Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,
Plaintiff,

vs.

JOHN W. JOHNSON, et al,

Defendants.

Portland, Oregon, Friday, March 5, 1912.

Mr. VEAZIE: The plaintiff offers in evidence a transcript of the proceedings in Douglas County, with stipulation of the parties to this suit that the same may be received in evidence, and would ask to have it marked as plaintiff's exhibit.

Mr. MORGAN: No objection.

Marked "Plaintiff's Exhibit 1."

Mr. VEAZIE: The plaintiff also offers in evidence

certified exemplification from the records of Douglas County of the deed of Aaron Johnson to Andrew Johnson, bearing date the 21st day of May, 1904, together with the certificate of the record thereof in Deed Book 49, on pages 158 and 159 of Records of Deeds of Douglas County, Oregon, on the 7th day of June, 1904.

Mr. MORGAN: Subject to our right to show that is nothing more than a fraudulent conveyance, or at most a mortgage.

Marked "Plaintiff's Exhibit 2."

Mr. VEAZIE: The patent in this case, may it please the court, has never been recorded; there is no contention over the patent.

Mr. MORGAN: No, we all claim under the patent.

Mr. VEAZIE: It is stipulated that the lands in question were patented to the Aaron Johnson referred to in the pleadings and the introduction of the patent in evidence is waived by the parties.

We offer in evidence deed of Andrew Johnson and wife to Aaron Johnson, bearing date the 8th day of April, 1907, with certificate or acknowledgement thereon bearing the same date, and the certificate of record thereof in book 57, at page 103, deed records of Douglas County, Oregon, on the 24th day of April, 1907, conveying the same property.

Mr. MORGAN: Not admitting, your honor, that this is anything more than the satisfaction of mortgage, we consent to the introduction of plaintiff's exhibit.

Marked "Plaintiff's Exhibit 3."

Mr. VEAZIE: We offer in evidence, your Honor, the deed of Aaron Johnson to the North Star Lumber Company, the plaintiff in this case, bearing date the 21st day of February, 1907, with the certificate of acknowledgement thereon, bearing date the 8th day of March, 1907, and certificate of record thereof in Deed Book 57, page 103, of the records of Douglas County, Oregon, on the 24th day of April, 1907.

Mr. MORGAN: That, your Honor, is objected to until such time as counsel establishes the date and circumstances of delivery of that deed. I think, your honor, that goes to the objection to the introduction of it.

COURT: Very well.

Marked "Plaintiff's Exhibit 4."

F. F. WILLIAMS, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. VEAZIE):

Q. Mr. Williams, what is your connection, if any, with the plaintiff corporation?

A. I am their agent in this state—bought their timber for them.

Q. How long have you represented the North Star Lumber Company in its business here?

A. Since some time in 1907.

Q. Were you the agent of the company at the time of the purchase of the land in controversy here?

A. Yes, sir.

Q. Can you state the date when the transaction of

purchase by which the North Star Lumber Company received the deed just introduced in evidence as Plaintiff's Exhibit 4, was made?

A. The deed was left at the First National Bank of Hoquiam, Washington; that is where I paid for it; left my check there.

Q. Do you know when the deed was deposited in the bank?

A. It was in March, the latter part of March.

Q. Can you state the date when the payment was made and the delivery took place?

A. Well, I left a check at the bank on the 28th of March.

Q. Was the deed there at that time

A. Well, it was—it was there a few days after that. I left my check there to pay for the land, and then was out of town; was out in the woods for quite a time, and the deed was delivered to the bank.

Q. The deed. Was the deed delivered during your absence?

A. Yes, sir.

Q. Have you anything that indicates when the bank made the payment

A. I have my cancelled check.

Q. You may produce that. (Witness does so.) This check was signed by you, was it?

A. Yes, sir.

Q. You had a deposit in that bank at that time, did you?

A. Yes, sir.

Q. Was the payment made and charge made

against your account by the bank?

A. Yes, sir.

Q. Do you know the paying stamp of the bank?

A. Yes, sir.

Q. Is that the usual stamp

A. Yes, sir.

Q. Used by the bank on making payments ?

A. Yes, sir.

Mr. VEAZIE: We would offer this simply as a memorandum to fix the date of payment if there is no objection to that. It seems to be the only item of evidence that fixes that precisely.

Marked "Plaintiff's Exhibit 5."

Q. Was that item charged against your account as being paid out on the date the check bears date?

A. Yes, at that time, or within a very short time of it.

Q. What amount was paid as purchase price by the North Star Lumber Company for the land in question?

A. \$2000.00.

Q. What is the land worth at this time

A. Well, from four to five thousand dollars.

COURT: What is the date shown on the check?

Mr. VEAZIE: April 12, 1907.

Q. Do you know about the delivery of the deed from Andrew Johnson to Aaron Johnson, as to whether or not it was placed in the bank at the same time that the other deed was taken up, or not?

A. Well, I think they were both taken up at the same time, and sent down for record.

Q. By whom were the papers recorded, Mr. Williams, or sent for record to Douglas County?

A. I sent them down.

Cross Examination

(Questions by Mr. MORGAN):

Q. Are you a stockholder of the North Star Lumber Company, Mr. Williams?

A. I am not.

Q. Are you their agent here only?

A. Yes, sir.

Q. Do you hold any office with that company?

A. I do not.

Q. Did you make this purchase of land yourself?

A. Yes, I—Mr. Richardson looked this man up for me at Hoquiam.

Q. Mr. John Richardson?

A. John Richardson.

Q. And the transaction was had through the First National Bank?

A. At Hoquiam.

Q. This paper bears date the 21st of February of that year. How do you account for that early date?

A. Well, this man that deeded it at that time was up in Canada and it took some time for the papers to get around, on that account, I think.

Q. Your dealings were with Mr. John Richardson with reference to this land?

A. Yes, he looked up the man. He was there in

Hoquiam all the time, and he looked up these parties —this Johnson.

Q. Then these deeds were gotten together about the 28th of March, you think?

A. Well, I should think it was shortly after the 28th of March.

Q. Shortly after. Now, the deed from Andrew Johnson bears date April 8th, does it not?

A. I don't remember.

Q. Do you remember?

A. I don't remember about that.

Q. Well, does that help to fix your memory as to when the deeds were placed in the First National Bank?

A. I don't quite get.

Q. As to whether they were put in the bank together, that is the two deeds in escrow.

A. Well, I don't know whether they were or not.

Q. You couldn't say as to that?

A. No, I was out of town at that time.

Q. Do you know where Andrew Johnson lived at that time?

A. Andrew?

Q. Yes.

A. No, I don't. He was a resident of Hoquiam for a long time. I don't know where he was just at that time.

Q. Did you have any writing that was deposited with the First National Bank, along with these deeds, to show the terms of the escrow?

A. Well, I don't remember, I presume likely there was.

Q. Let me understand. You put your \$2000.00 in the bank?

A. With instructions to——

Q. To pay for this tract when the deeds came in?

A. Yes, sir—well, I can't tell you just what the instructions were, now. That was the usual instructions to—well, I left a check there and they were to take up the deed; pay the money over to the man who owned the land.

Q. How much of that money was paid to Andrew Johnson?

A. Andrew?

Q. Yes.

A. I didn't know Andrew.

Q. This amount of two thousand dollars which was recited in this deed was the amount that was paid to Aaron?

A. Aaron.

Q. The man who was in British Columbia?

A. Yes, sir.

Q. And that was paid by this check which you have here in evidence?

A. Yes, sir.

Q. Did you pay any sum to Andrew?

A. I did not.

Q. Or pay any to——

A. This \$2000.00 was all I paid for the land.

Q. The bank sent you these deeds, or did you go to the bank and get them?

A. Well, I don't remember about that. Sometimes I was there and got the deeds, and sometimes

they sent them to me, I was out in the woods most of the time at that time, and sometimes they lay there for quite a while before I would get them. It seems that they did in this instance.

Redirect Examination.

Q. Has Aaron Johnson remained in Canada ever since that time?

A. Yes, sir, he is there at the present.

Q. You have had correspondence with him since?

A. Yes, sir.

Q. And know he has remained there?

A. Yes, sir.

Q. You found both deeds at the bank, did you when you got back?

A. They were either both there or sent to me.

Q. Do you know anything about how the \$2,-000.00 was distributed as between the two men, Andrew and Aaron?

A. No, I wouldn't know anything about that; that was left to the bank.

Recross Examination.

Q. Do you know where Andrew Johnson is?

A. Do I know?

Q. Yes.

A. Yes, sir.

Q. What is his place of residence?

A. It is at High Point, Washington.

Q. High Point?

A. High point.

Witness excused.

Mr. VEAZIE: I don't understand you raise any question as to our corporate organization.

Mr. MORGAN: No, no.

Plaintiff Rests.

Mr. MORGAN: At this time, your Honor, we move to dismiss this action, first, for want of equitable jurisdiction. We base this upon the ground that under the statutes of the State of Oregon, there is a plain and speedy and adequate remedy at law for this proceeding, one that is open to the plaintiff, either in the state court or in this court, and for that reason we move for dismissal on the ground of lack of equitable jurisdiction. We also move for its dismissal for want of equity in this, that the plaintiff has wholly failed to establish an equitable right, or right to equitable relief. Perhaps these matters had better be argued in toto but I desire to preserve this objection at this time, but I will just point out to the court this: that under a long line of decisions in the federal courts, the federal courts will not grant equitable relief if there is any legal relief even though, in the practice in the state court, either remedy might have been resorted to. And in support of the second proposition, I desire to point out to the court that through a long line of decisions in the United States Courts, they decline to grant equitable relief where the only ground for such relief is founded upon what is claimed to be a void judgment of a state court, in the absence of a showing of a mistake. I have a long line of decisions, but I take it your Honor would hear the testimony.

COURT: Yes, hear your testimony on the merits.

Mr. MORGAN: A portion of the record has been introduced by the plaintiff, but under the stipulation it was provided that certain other matters which occurred in that court since June 3, 1911, by way of correcting some clerical errors in that record might be added, and; we offer these as a part of the record of the Oregon Court, under the stipulation.

Mr. VEAZIE: May it please the Court, we object to this as immaterial and irrelevant and as matters occurring subsequent to the bringing of this suit. We make no objection on account of the form in which they are certified.

COURT: Admitted subject to your objection.

Two papers offered and marked as "DEFENDANT'S EXHIBITS A and B."

Mr. MORGAN: We offer in evidence, your Honor, the original deed from the Sheriff of Douglas County to John W. Johnson, the defendant here.

Mr. VEAZIE: We object to it, your Honor, on the ground that it appears from the evidence here that the proceedings upon which the said deed is based were null and void and that the deed is itself, therefore, void and of no effect.

COURT: It will go in the record, subject to your objection.

Marked "Defendant's Exhibit C."

JOHN W. JOHNSON. The defendant in the case being first duly sworn, testified in his own behalf, as follows:

Direct Examination.

(Questions by Mr. MORGAN):

Q. Where do you live, Mr. Johnson?

A. Hoquiam.

Q. What is your occupation?

A. What?

Q. What is your business?

A. I am foreman in a sash and door factory.

Q. You are the defendant in these proceedings?

A. Yes, sir.

Q. At the time this suit was brought by you in Douglas County against Aaron Johnson and Eline Engebritson, did you at that time know that the North Star Lumber Company had any interest in this property

A. No, I didn't know anything about it.

Q. How long after that was it that you found out that they had or claimed some interest in this property

A. Oh, I don't know; about probably a year and a half or something.

Cross Examination.

(Questions by Mr. VEAZIE):

Q. Have you ever seen the property

A. No, I never seen it.

Witness excused.

Mr. MORGAN: Now, I desire to offer in evidence, so that it may be made a part of the record certain of the statutes of the State of Oregon with reference to attachments and recording deeds.

COURT: The court will take judicial knowledge of those.

Mr. MORGAN: With that understanding, we will rest.

Defense rests.

[Endorsed]: Testimony. Filed Nov. 14, 1912.

A. M. CANNON,

Clerk U. S. District Court.

[Plaintiff's Exhibit 1.]

*In the District Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY,

Plaintiff,

vs.

JOHN W. JOHNSON, et al.,

Defendants.

It is stipulated and agreed between the plaintiff and the defendant John W. Johnson, as follows:

1. That the order for publication of summons in the case of John W. Johnson vs. Aaron Johnson and Eline Engebritson, in the Circuit Court of the State of Oregon for Douglas County, bearing date the 11th day of October, 1907, copy of which was shown in the transcript filed as an exhibit at the trial of the above entitled cause to be without signature, was as shown by the journal of said Court in fact signed by J. W. Hamilton, Judge of said Court.

2. That F. F. Williams, called as a witness at the trial of this suit on behalf of the North Star Lumber Company, shall be deemed to have testified therein

that the North Star Lumber Company had no knowledge of the fact that the said action in Douglas County, State of Oregon, had been brought or that said real property had been attached therein, or that any judgment had been rendered therein, or any sale made thereunder until within about thirty days prior to the bringing of the suit of the North Star Lumber Company vs. John W. Johnson, et al., in this Court above entitled.

VEAZIE & VEAZIE,

Solicitors for Plaintiff.

JOHN VAN ZANTE,

of Solicitors for Defendant John W. Johnson.

*In the District Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,
Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

STIPULATION.

Subject to the right of either party to show any additional matters occurring since June 3rd, 1911.

It is hereby stipulated and agreed between the plaintiff, North Star Lumber Company, and the defendant John W. Johnson, that the accompanying transcript of papers from the records and files of the

Circuit Court of the State of Oregon for the County of Douglas, in the case of John W. Johnson plaintiff, against Aaron Johnson and Eline Engebritson, defendants, prepared and certified to by E. H. Lenox, County Clerk, by Blanche Reed, deputy clerk, with the seal of said court attached, under date of June 3rd, 1911, shall be filed and received in evidence at the trial of the above entitled cause now pending between the North Star Lumber Company and the said defendant John W. Johnson, in the District Court of the United States for the District of Oregon, as containing and comprising a true and correct record and transcript of all the papers filed and proceedings had in said Circuit Court of the State of Oregon for Douglas County in said entitled action, and without objection thereto on account of the manner in which the same is certified; and on the trial of said cause either party hereto may have the benefit of said transcript.

Dated at Portland, Oregon, this 9th day of March, 1912.

NORTH STAR LUMBER COMPANY,

By VEAZIE & VEAZIE,

Attorneys for Plaintiff.

JOHN W. JOHNSON,

By

MORGAN & BREWER and JOHN VAN ZANTE,

Attorneys for Defendant John W. Johnson.

Filed Mar. 15, 1912.

A. M. CANNON,

Clerk U. S. District Court.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

Plaintiff for cause of action against the Defendants complains and alleges:

That on the 2nd day of March, at Hoquiam, Washington, the defendants, for value received, made, executed and delivered to the Plaintiff, their certain promissory note, wherein and whereby they promised jointly and severally to pay to Plaintiff the sum of Two Hundred Seventy-five (275.00) Dollars in monthly installments of Twenty (20.00) Dollars per month, beginning April 1, 1904, with interest from date at the rate of Eight (8) per cent per annum; and if not paid as therein specified, the whole sum of both principal and interest should become immediately due and collectable at the option of the holder of the note, and further promised in and by said promissory note, to pay to Plaintiffs a reasonable sum as attorneys' fees in case suit or action should be instituted to collect said note or any part thereof;

That no payments have been made on said note, except the sum of Twenty (20.00) Dollars paid April 8, 1904, and the further sum of Twenty (20.00) Dollars paid May 10, 1904;

That Thirty (30.00) Dollars is a reasonable attor-

ney fee for instituting this action for the collection of said note ;

That there is now due and owing from the Defendants to the plaintiffs, the full sum of Two Hundred Seventy-five (275.00) Dollars with interest thereon at the rate of eight (8) per cent per annum, from the 2nd day of March, 1904, less the sum of Twenty (20.00) Dollars paid April 8, 1904, and the further sum of Twenty (20.00) Dollars paid May 10, 1904; and also due from Defendants to Plaintiff, the further sum of Thirty (30.00) Dollars, as attorney's fees for instituting this action for the collection of said note.

WHEREFORE Plaintiff demands judgment against the Defendants and each of Defendants for the full sum of Two Hundred Seventy-five (275.00) Dollars, in Gold Coin of the United States of America together with interest thereon in like Gold Coin from the 2nd day of March, 1904, at the rate of Eight (8) per cent per annum, less the sum of Twenty (20.00) Dollars paid April 8, 1904, and the further sum of Twenty (20.00) Dollars paid May 10, 1904; and Plaintiff further demands judgment against the Defendants for the further sum of Thirty (30.00) Dollars, attorneys fees, and Plaintiffs' costs and disbursements herein to be taxed.

COSHOW & RICE,
Attorneys for Plaintiff.

STATE OF OREGON,
County of Douglas—ss.

I, O. P. Coshow, being first duly sworn, say that I

am one of Plaintiff's attorneys in the above entitled action; that the foregoing complaint is true as I verily believe; that I make this verification for the reason that I am such an attorney and that this action is founded upon a written instrument for the payment of money only, and said written instrument is in my possession.

O. P. COSHOW.

Subscribed and sworn to before me this 1st day of April, 1907.

Z. N. AGEE,
County Clerk.

(Endorsed on the back as follows:—)

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

COMPLAINT.

Filed this 1st day of April, A. D., 1907.

Z. N. AGEE,
Clerk.

By E. H. Lenox, Deputy.
COSHOW & RICE,
Attorneys for Plaintiff.

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,

Defendants.

AFFIDAVIT FOR ATTACHMENT.

STATE OF OREGON,

County of Douglas—ss.

I, O. P. Coshow, being duly sworn, say that the Defendants above named are indebted to the above named Plaintiff in the sum of Two Hundred Seventy-five Dollars, with annual interest at 8 per cent from March 2nd 1904, less \$20 paid April 8th, 1904, and \$20, paid May 10th 1904, besides attorneys' fees, etc., over and above all legal setoffs and counter claims, upon an express contract for the direct payment of money, and that the payment of the same has not been secured by any mortgage, lien or pledge upon real or personal property.

That the said sum of Two Hundred Seventy-five Dollars, for which the attachment is asked, is an actual, bona fide existing debt, due and owing from the Defendants to the Plaintiff, and that this attachment is not sought, and this action is not prosecuted to hinder, delay or defraud any creditors of the Defendant, That I make this affidavit for and behalf of plaintiff for the reason that plaintiff is not in this state and I am his attorney.

O. P. COSHOW,

Subscribed and sworn to before me, this 1st day of April, A. D., 1907. As witness my hand and official seal.

[Seal.]

Z. N. AGEE,
County Clerk.

(Endorsed on the back is the following:—)

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

AFFIDAVIT FOR ATTACHMENT.

JOHN W. JOHNSON,
Plaintiff,
AARON JOHNSON, ET AL.,
Defendants.

Filed Apr. 1, 1907.

Z. N. AGEE,
County Clerk.

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

UNDERTAKING FOR ATTACHMENT. ..

WHEREAS, a certain action has been commenced in the Circuit Court of the State of Oregon, in and for the County of Douglas, wherein John W. Johnson is Plaintiff and Aaron Johnson and Eline Engbritson are Defendants, for the recovery of Two Hundred

Seventy-five Dollars, with annual interest at 8 per cent besides attorneys fees and disbursements and the Plaintiff is about to apply for an attachment against the property of the Defendant as security for the satisfaction of such judgment as he may recover against said Defendant.

NOW, THEREFORE, We, John W. Johnson as principal and residing at Roseburg in the County of Douglas by occupation a banker, as surety are jointly and severally bound in the sum of three hundred Dollars, and undertake in the said sum that the Plaintiff will pay all costs that may be adjudged to the Defendants, and all damages which they may sustain by reason of the attachment, if the same be wrongful or without sufficient cause, not exceeding the said sum of Three Hundred Dollars.

JOHN W. JOHNSON,

By O. P. Coshow, his Attorney.

T. R. Sheridan,

STATE OF OREGON,

County of Douglas—ss.

T. R. Sheridan, whose name is subscribed as the surety to the above undertaking, being severally duly sworn each for himself, says: That I am a resident and free holder within the State of Oregon, and am worth the sum of Six Hundred Dollars, over and above all my just debts and liabilities, exclusive of property exempt from execution, and that I am neither an Attorney, Clerk, Sheriff or other officer of any Court.

T. R. SHERIDAN,

Subscribed and sworn to before me this 1st day of April, A. D., 1907.

[Seal.]

O. P. COSHOW,
Notary Public for Oregon.

(Endorsed on the back is the following:—)

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

UNDERTAKING FOR ATTACHMENT.
JOHN W. JOHNSON,

Plaintiff,

AARON JOHNSON, et al,

Defendants.

Filed Apr. 1, 1907,

Z. N. AGEE,
County Clerk.

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

I, H. T. McClallen, Sheriff of Douglas County, Oregon, do hereby certify that by virtue of a Writ of Attachment, duly issued out of the above named Court and cause, on the 1st day of April, 1907, and to me directed and delivered, on the 1st day of April, 1907, did, at the suit of said Plaintiff in said action, in said County and State, on the 1 day of April, 1907,

duly attach all the right, title and interest the said Defendant or either of them had, on the 1st day of April, 1907, or at any time thereafter, in or to the following described real property, to wit:

NW $\frac{1}{4}$ Sec. 10, Township 21 S., of R. 7 W., W. M., Douglas County, Oregon.

H. T. McCLALLEN,
Sheriff.

By.....Deputy.

(Endorsed on the back is the following:—)

CERTIFICATE OF ATTACHMENT.

*In the Circuit Court State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGEBRITSON,

Defendants.

Filed the 1st day of April, 1907.

Z. N. AGEE,
County Clerk.

E. H. Lenox, Deputy.

2:15 P. M.

Vol. 3, P. 332.

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGEBRITSON,
Defendants.

To Aaron Johnson and Eline Engebritson, the above
named Defendants:

IN THE NAME OF THE STATE OF OREGON: You are hereby required to appear and answer the complaint filed against you in the above entitled action within ten days from the date of the service of this summons upon you; if served within this County; or if served in any other County of this State, then within twenty days from the date of the service of this summons upon you; and if you fail to answer, for want thereof, the Plaintiff will take judgment against you for the sum of Two Hundred Seventy-five (275.00) Dollars, in Gold Coin of the United States, together with interest thereon in like Gold Coin from the 2nd day of March, 1904, at the rate of Eight (8) per cent per annum, less the sum of Twenty (20.00) Dollars paid April 8, 1904 and the further sum of Twenty (20.00) Dollars paid May 10, 1904; and the Plaintiff further demands judgment against the Defendants for the further sum of Thirty (30.00) Dollars, attorneys' fees, and Plaintiff's costs and disbursements herein to be taxed.

COSHOW & RICE,
Attorneys for Plaintiff.

STATE OF OREGON,
County of Douglas—ss.

I HEREBY CERTIFY that I have received the
within SUMMONS, within the County of Douglas,

State of Oregon, on the 1st day of April, 1907, and after due and diligent search and inquiry I have herewith return that I have been unable to find the said Aaron Johnson and Eline Engebritson within the County and State.

H. T. McCLALLEN,

Sheriff of Douglas County, Oregon.

By H. C. Slocum, Deputy.

Dated this 8th day of May, 1907.

(Endorsed on the back of Summons is the following:—)

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

SUMMONS.

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

Received Apl. 1", 1907.

H. T. McCLALLEN,

Sheriff of Douglas County.

COSHOW & RICE,

Attorneys for Plaintiff.

Filed May 8, 1907, at 11:30 o'clock A. M.

Z. N. AGEE,

County Clerk.

By E. H. Lenox, Deputy.

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGEBRITSON,
Defendants.

TO THE SHERIFF OF DOUGLAS COUNTY,
GREETING:

WHEREAS, The above named plaintiff has filed a complaint, with affidavit and undertaking for an Attachment to issue in the above entitled cause and Court, therefore,

IN THE NAME OF THE STATE OF OREGON,
You are hereby commanded to attach and safely keep all property, real and personal, of Aaron Johnson and Eline Engebritson, the defendants above named, within your County, not exempt from execution, or so much thereof as may be necessary to satisfy the demand of John W. Johnson, Plaintiff above named, amounting to Two hundred seventy-five dollars,, Dollars and interest thereon, at the rate of 8 per cent per annum from the 2 day of March, 1904, less sum of Twenty (20.00) paid April, 8, 1904, and the further sum of \$20.00 paid paid May 10, 1904, and plaintiff demands the further sum of \$30.00 Atty's fee, together with the costs and disbursements. And of this Writ make legal service and return.

IN WITNESS WHEREOF, I Have hereunto set my hand and affixed the seal of the Circuit Court, above named, this 1st day of April, 1907.

[Seal.]

Z. N. AGEE,
Clerk Circuit Court.

STATE OF OREGON,

County of Douglas—ss.

I hereby certify that I received the within named Writ of Attachment on the 1st day of April, 1907, and executed the same on the 1st day of April, 1907, in Douglas County, Oregon, by levying upon and attaching at the suit of the within named John W. Johnson Plaintiff herein, all the right title and interest of the within named Aaron Johnson and Eline Engebritson, defendant herein, in and to the real or personal property, situated in said Douglas County, Oregon, described as follows:

NW¼ of Section 10, Township 21 S., of R. 7 W., W. M., Douglas County, Oregon.

And that I have levied upon and attached the same, by making and delivering to the County Clerk of said Douglas County, a certificate containing the title of the cause, the name of the parties to the action, a description of said real property as above set forth and a statement that the same was attached at the suit of the plaintiff.

....

H. T. McCLALLEN,

Sheriff of Douglas County, Oregon

By.....Deputy.

(Endorsed on the back of Writ of Attachment is the following:—)

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

WRIT OF ATTACHMENT.

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

Filed May 8, 1907, at 11 o'clock A. M.

Z. N. AGEE,

County Clerk.

E. H. Lenox, Deputy.

*In the Circuit Court of Douglas County,
State of Oregon.*

BE IT REMEMBERED, That at a regular term of the Circuit Court of the State of Oregon, for Douglas County, began and held in the Court Room at the Court House in Roseburg Oregon, on Monday, the 20th day of May, 1907, at which were present:

Hon. J. W. HAMILTON,

Judge.

Geo. M. Brown, Dist. Atty.

Z. N. Agee, Clerk.

H. T. McClallen, Sheriff.

Among other proceedings the following was had on the 20th day of May, 1907, being the first judicial day of the term, to wit:

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

Now at this time this cause coming on for hearing plaintiff appearing by his attorney Coshow & Rice,

upon motion of plaintiff's attorney.

It is considered, ordered and adjudged that said cause be and the same is hereby continued for service.

J. W. HAMILTON,

Circuit Judge.

Attest: Z. N. Agee,

Clerk.

By E. H. Lenox, Deputy.

(Endorsed on the back is the following:—)

J. W. JOHNSON,

vs.

A. JOHNSON, et al.

May 20, 1907.

Vol. 18, P. 125.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,

Defendants.

MOTION.

Comes now the plaintiff above named, by his attorney, and moves the Court for an Order for service of summons in the above entitled action by publication.

This motion is based upon an affidavit of plaintiff herein and herewith filed.

COSHOW & RICE,

Attorneys for Plaintiff.

*In the Circuit Court of the State of Oregon
for Douglas County.*

STATE OF OREGON,

County of Douglas—ss.

I, O. P. Coshow, being first duly sworn say that I am one of the plaintiff's attorneys in the above entitled action. That the post office address of neither of the defendants could be ascertained at the present time. That I prepared the affidavit of John W. Johnson, filed herewith, and mailed it to his attorney at Hoquiam, for his execution. That I requested information regarding the present post office address of both said defendants, and was informed by plaintiff through his attorney that the same is unknown to him, and could not be ascertained by him through inquiry among the former associates and friends of said defendants at Hoquiam, or by other means.

That the last known post office address of defendants is as follows, Aaron Johnson, at Hoquian, Washington, Eline Engebritson, at Seattle, Washington, but the local address is not known.

O. P. COSHOW.

Subscribed and sworn to before me this 9th day of September, 1907.

[Seal.]

DEXTER RICE,

Notary Public for Oregon.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

AFFIDAVIT.

STATE OF OREGON,
County of Chehalis—ss.

I, John W. Johnson being first duly sworn say that I am plaintiff above named that the above named plaintiff commenced action against the above named defendants in the above entitled Court on the 1st day of April, 1907, by filing his complaint herein, and causing summons to be placed in the hands of the Sheriff of said County, for service on the defendants. That a copy of said Complaint is hereunto affixed, and made a part of this Affidavit. That on the 1st day of May, 1907, the said Sheriff of Douglas County returned said Summons, endorsed in effect that he was unable to find said defendants in said county and state. That I am personally acquainted with both said defendants, and that neither of said defendants reside in said State of Oregon. That neither of said defendants is in the State of Oregon at this time, so as to be served with said Summons personally within the State of Oregon. That the defendant, Aaron Johnson, a short time prior to the time said action was commenced, resided at Hoquiam, County of Chehalis, State of Washington, and has since gone to Canada, and his exact post office address is not known, and after diligent inquiry among his former associates at Hoquiam, I am unable to ascertain the same. That the defendant, Eline Engebritson also resided at Ho-

quiam, in said county and state a short time prior to the commencement of said action, and has since then moved from the city of Hoquiam to some other part of Washington, and her post office address is unknown to affiant, that the last affiant knew of her whereabouts she was in Seattle, in the State of Washington, but her local address was and is unknown to affiant. That on the 1st day of April, 1907, plaintiff filed his affidavit and undertaking for Attachment in the above entitled action, and thereupon the writ of attachment was duly issued in the above entitled action, and placed in the hands of the Sheriff of Douglas County for service, on the said 1st day of April, 1907. That on said date the said Sheriff duly served the writ of Attachment by levying upon and attaching the following described real property, situate in Douglas County, Oregon, to wit: The Northwest quarter of Section 10, Township 21 South, Range 7 West, Willamette Meridian, which said real property belongs to the above named defendant, and did on the first day of April, 1907, belong to the said defendant Aaron Johnson. That Plaintiff has good cause of action against the defendants, and the defendants can not be personally served with summons in the State of Oregon. That the above entitled court has jurisdiction of cause of action, as stated in said complaint. That both of said defendants are proper parties to said action and a good cause of action is stated in said Complaint against both of said defendants.

J. W. JOHNSON.

Subscribed and sworn to before me this 7th of Sep-

tember, 1907.

[Seal.]

CHARLES W. HODGDON,

Notary Public for Washington, residing at Hoquiam, Wash.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff.

vs.

AARON JOHNSON and ELINE ENGEBRITSON,
Defendants.

Comes now the Plaintiff above named and moves the Court for the Order for Service of Summons on the Defendant in the above entitled action by publication.

Attorneys for Plaintiff.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGEBRITSON,
Defendants.

Plaintiff for cause of action against the Defendants complains and alleges:

That on the 2nd day of March, at Hoquiam, Washington, the defendants, for value received, made, executed and delivered to the Plaintiff, their certain

promissory note, wherein and whereby they promised jointly and severally to pay to Plaintiff the sum of Two Hundred Seventy-five (275.00) Dollars in monthly installments of Twenty (20.00) Dollars per month, beginning April 1, 1904, with interest from date at the rate of Eight (8) per cent per annum; and if not paid as therein specified, the whole sum of both principal and interest should become immediately due and collectable at the option of the holder of the note, and further promised in and by said promissory note, to pay to Plaintiffs a reasonable sum as attorneys' fees in case suit or action should be instituted to collect said note or any part thereof;

That no payments have been made on said note, except the sum of Twenty (20.00) Dollars paid April 8, 1904, and the further sum of Twenty (20.00) Dollars paid May 10, 1904;

That Thirty (30.00) Dollars is a reasonable attorney fee for instituting this action for the collection of said note;

That there is now due and owing from the Defendants to the Plaintiffs, the full sum of Two Hundred Seventy-five (275.00) Dollars with interest thereon at the rate of eight (8) per cent per annum, from the 2nd day of March, 1904, less the sum of Twenty (20.00) Dollars paid April 8, 1904, and the further sum of Twenty (20.00) Dollars paid May 10, 1904; and also due from Defendants to Plaintiff, the further sum of Thirty (30.00) Dollars, as attorney's fees for instituting this action for the collection of said note.

WHEREFORE Plaintiff demands judgment

against the Defendants and each of Defendants for the full sum of Two Hundred Seventy-five (275.00) Dollars, in Gold Coin of the United States of America together with interest thereon in like gold coin from the 2nd day of March, 1904, at the rate of eight (8) per cent per annum, less the sum of Twenty (20.00) Dollars paid April 8, 1904, and the further sum of twenty (20.00) Dollars paid May 10, 1904; and Plaintiff further demands judgment against the Defendants for the further sum of Thirty (30.00) Dollars, attorneys fees, and plaintiffs costs and disbursements herein to be taxed.

COSHOW & RICE,
Attorneys for Plaintiff.

STATE OF OREGON,
County of Douglas—ss.

I, O. P. Coshow, being first duly sworn, say that I am one of Plaintiff's attorneys in the above entitled action; that the foregoing Complaint is true as I verily believe; that I make this verification for the reason that I am such an attorney and that this action is founded upon a written instrument for the payment of money only, and said written instrument is in my possession.

O. P. COSHOW.

Subscribed and sworn to before me this 1st day of April, 1907.

Z. N. AGEE,
County Clerk.

No.....
IN THE CIRCUIT COURT
OF THE
STATE OF OREGON,
FOR DOUGLAS COUNTY.

JOHN W. JOHNSON,
.....

Plaintiff,

vs.

AARON JOHNSON,
.....

Defendants,

Motion, etc., for Publication of
Summons.

Filed this 9th day of Sept., A. D.,
1907.

Z. N. AGEE,

Clerk.

E. H. Lenox,

Deputy.

COSHOW & RICE,
Attorneys for Plaintiff.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGEBRITSON,

Defendants.

ORDER.

Based upon the Motion of Plaintiff and the Affidavits of plaintiff, and his attorney, O. P. Coshow, and the return from the Sheriff of Douglas County, State of Oregon, on the summons, and the Complaint, all on file in the above entitled court and cause, it is,

ORDERED, That service of summons in the above entitled action be served upon the above named Defendants by publication in the Roseburg Review for a period of Six (6) weeks, once each week; and that a copy of said summons and complaint in said action be forthwith mailed to defendant Aaron Johnson, at Hoquiam, Chehalis County, Washington, that being his last known post office address, and to the defendant Eline Engebritson at Seattle, in the State of Washington, that being her last known post office address.

Done at Roseburg, Oregon, this 9th day of September, 1907.

G. W. WONACOTT,

County Judge for Douglas County, Oregon

(Endorsed on the back of this Order is the following:—)

IN THE CIRCUIT COURT OF THE STATE OF
OREGON FOR DOUGLAS COUNTY.

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON, ET AL.,

Defendants.

Order for publication of Summons.

Filed this 9th day of Sept., A. D., 1907.

Z. N. AGEE,

Clerk.

By E. H. Lenox, Deputy.

COSHOW & RICE,

Attorneys for Plaintiff.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGEBRITSON,

Defendants.

Comes now the Plaintiff by his Attorneys Coshow & Rice and moves the Court for an Order for Publication of Summons in the above entitled action.

This Motion is based upon the pleadings in this action and the Affidavits of O. P. Coshow and the Plaintiff herein.

COSHOW & RICE,

Attorneys for Plaintiff.

(Endorsed on the back is the following:—)

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

MOTION.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

STATE OF OREGON,

County of Douglas—ss.

I, O. P. Coshaw, being first duly sworn, say: That heretofore, on the 9th day of September, 1907, Hon. G. W. Wonacott, County Judge, duly made an order for Publication of Summons in the above entitled action, and directed that copies of said summons be forthwith mailed to the Defendants and each of them at Hoquiam, Washington; That on the 10th day of September, 1907, I caused copies of said Summons and copies of the Complaint duly certified, to be mailed to said Defendants, separately as shown by the affidavit of Evelyn Johnson hereto attached, marked Exhibit A, and made a part of this affidavit; by in-

advertence I neglected and omitted to have said summons published, and summons has not been published in this action; that both of said letters addressed to the Defendants, as aforesaid, at Hoquiam, Washington, have been returned unopened and uncalled for; that the address of either of the defendants is unknown to the Plaintiff and cannot be ascertained with reasonable diligence; that due and strict enquiry has been made to ascertain said addresses from the former friends of the said Defendants living at Hoquiam, Washington, by the Plaintiff and his attorneys at Hoquiam, C. W. Hodgdon, and no one can be found who known their addresses.

O. P. COSHOW.

Subscribed and sworn to before me this 11th day of October, 1907.

[Seal.]

DEXTER RICE,

Notary Public for Oregon.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

AFFIDAVIT.

I, Evelyn Johnson, being first duly sworn say that I am a citizen of the United States over the age of twenty-one years.

That on the 10th day of September, 1907, at Rose-

burg, Oregon, I deposited in the United States post office, enclosed in an envelope securely sealed, and with postage fully prepaid, a copy of the Complaint and summons, directed to be published, in the above entitled action, duly certified to be such copies by O. P. Coshow, an attorney for the plaintiff, plainly addressed to the above named defendant, Aaron Johnson, Hoquiam, Washington; and also a like copy of said Summons and Complaint, enclosed in an envelope, with postage fully prepaid, as aforesaid, and plainly addressed to the above named defendant Eline Engebritson, Seattle, Washington.

That I am not related to either the plaintiff nor defendant named above, nor am I a party to said action.

EVELYN JOHNSON.

Subscribed and sworn to before me, this 10th day of Sept., 1907.

[Seal.]

DEXTER RICE,

Notary Public for Oregon.

(Endorsed on Cover is the following:—)

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs

AARON JOHNSON and ELINE ENGEBRITSON,

Defendants.

MOTION.

Filed this 11th day of Oct., A. D., 1907.

Z. N. AGEE,

Clerk.

By E. H. Lenox, Deputy.
COSHOW & RICE,
Attorneys for Plaintiff.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants,

It appearing to the satisfaction of the Court that neither of the Defendants above named can be found within the State of Oregon, and that a cause of action exists against both of said Defendants and that both of said Defendants are proper parties to the above entitled action; and it appearing to the satisfaction of the Court that the postoffice address of neither of the Defendants is known and cannot be found with reasonable diligence; it is

ORDERED that both of said Defendants be served with Summons by publication in the Roseburg Review for a period of six successive weeks.

Dated this 11th day of October, 1907.

Judge.

(Endorsed on the back is the following:—)

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

ORDER.

10|11|07.

Vol. 18, P. 262.

Be It Remembered, That at a regular term of the Circuit Court of the State of Oregon, for Douglas County, began and held in the Court room at the Court House in Roseburg, Oregon, on Monday the 20th day of January, 1908, at which were present:

Hon. J. W. HAMILTON,
Judge.

GEO M. BROWN,
Prosecuting Atty.

Z. N. AGEE,
Clerk, by E. H. Lenox, Deputy.
H. T. McCLALLEN,
Sheriff.

Among other proceedings the following was had on the 22nd day of January, 1908, being the 3rd Judicial day of the term to wit:

JOHN W. JOHNSON,

Plff

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Dfts

Now at this time this cause coming on for hearing, plaintiff appearing by his attorneys, Coshow & Rice, and upon motion of plaintiff's attorneys for continuance.

It is considered, ordered and adjudged that said cause be and the same is hereby continued for the term.

J. W. HAMILTON,
Judge.

Attest:

Z. N. Agee, Clerk.

By E. H. Lenox, Deputy.

1|22|08.

Vol. 18, P. 453.

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

COPY.

SUMMONS.

In the Circuit Court of the State of Oregon for Douglas County:

John W. Johnson, Plaintiff vs. Aaron Johnson and Eline Engebritson, Defendants.

In the name of the State of Oregon, to Aaron Johnson and Eline Engebritson, the defendants above named, you and each of you are hereby required to appear in the above entitled Court to answer complaint of the plaintiff in the above entitled cause on or before six weeks from the date of the first publication of this summons, and if you fail to so appear and answer said complaint the plaintiff will take judgment against you, and each of you, in the sum or Two Hundred Seventy-five and no 100 Dollars (\$275.00) in gold coin of the United States of America, with interest thereon in like gold coin, at the rate of eight

(8) per cent per annum, from the 2nd day of March, 1904, less the sum of Twenty Dollars (\$20.00) paid April 8, 1904, and the further sum of Twenty Dollars (\$20.00) paid May 10, 1904, and plaintiff will take judgment for the further sum of Thirty Dollars (\$30.00) attorneys fees, and the costs and disbursements of this action to be taxed; and will secure an order in the above entitled court for the sale of the Northwest quarter of Section 10, Township 21 South, Range 7 West, Willamette Meridian, Douglas County, State of Oregon, heretofore attached in the above entitled action, to satisfy said judgment.

This summons is published in the Roseburg Review by order of the above entitled court from J. W. Hamilton, Judge, made Oct. 11, 1907, and will be published once each week for six (6) successive weeks. The date of the first publication of this summons is Oct. 14, 1907.

COSHOW & RICE,

Attorneys for Plaintiff.

Office of

THE ROSEBURG REVIEW,

Roseburg, Oregon.

Issued every Monday and Thursday.

I, L. Wimberly being first duly sworn, say I am the publisher and printer of the Roseburg Review.

That said Review is a semi-weekly newspaper published and issued semi-weekly and regularly at Roseburg, in Douglas County, State of Oregon, and is of general circulation in said County and State.

That the notice, of which the one hereto attached is

a true and correct copy, was published in said paper once a week for 6 weeks, being published 7 times; the first on the 14th day of October, 1907, and the last on the 25th day of November, 1907.

That said notice was published in the regular and entire issue of said paper during the said period and times of publication, and that the said notice was published in the newspaper proper and not in a supplement.

L. WIMBERLY.

Subscribed and sworn to before me this 16th day of May, 1908.

[Seal.]

O. P. COSHOW, JR.,
Notary Public for Oregon.

(Endorsed on the back is the following:—)

*In the Circuit Court State of Oregon
County of Douglas.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON, et al.,

Defendants.

PROOF OF PUBLICATION.

Filed May 16, 1908.

Z. N. AGEE,
Clerk.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JNO. W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants,

Comes now the Plaintiff above named and moves
the Court for Judgment by Default against said De-
fendants.

COSHOW & RICE,
Attorneys for Plaintiff.

(Endorsed on back is the following:—)

*In the Circuit Court of the State of Oregon
for Douglas County.*

JNO. W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON, ET AL.,

Defendants.

MOTION.

Filed May 16, 1908.

Z. N. AGEE,
Clerk.

*In the Circuit Court of Douglas County,
State of Oregon.*

Be It Remembered, that a regular term of the Cir-
cuit Court of the State of Oregon for Douglas Coun-
ty, began and held in the Court Room in Roseburg,
Oregon, on Monday the 20th day of January, 1908, at
which were present:

Hon. L. T. HARRIS,
Judge.

GEO. M. BROWN,
Pros. Atty.
Z. N. AGEE,
Clerk
H. T. McCLALLEN,
Sheriff.

Among other proceedings the following was had on Saturday, the 16th day of May, 1908, being the 11th Judicial day of the term, to-wit:

*In the Circuit Court of the State of Oregon
for Douglas County.*

JNO. W. JOHNSON,
Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

This cause coming on to be heard upon Motion of Plaintiff for Judgment by Default, Plaintiff appearing by his Attorneys, Coshow & Rice, and neither of Defendants appearing; and,

It appearing to the satisfaction of the Court that both of said Defendants were duly served with Summons herein, long prior to this date, and that neither of said Defendants have answered the Complaint of Plaintiff, or otherwise pleaded thereto, it is

ADJUDGED AND CONSIDERED that said Defendants and both of them are in default and their default is hereby entered; and

It appearing to the satisfaction of the Court that said Defendants are indebted to the Plaintiff in the

full sum of Two Hundred Seventy-five (275.00) Dollars, in gold coin of the United States of America, with interest thereon in like gold coin at the rate of eight per cent per annum, from the 2nd day of March, 1904, less the sum of Twenty (20.00) Dollars paid April 8, 1904, and the further sum of Twenty (20.00) Dollars, paid May 10th, 1904.

That thirty (30.00) Dollars is a reasonable attorney fee; and,

It further appearing to the satisfaction of the Court, that heretofore, to wit; on the 21st day of April, 1907, at the suit of Plaintiff herein, the following real property belonging to the Defendant Aaron Johnson, was duly attached, to wit, the Northwest quarter, Section 10, Township 21 South, Range 7 West, Willamette Meridian, in Douglas County, Oregon; it is, therefore,

CONSIDERED AND ADJUDGED that plaintiff have and recover off and from the Defendants the full sum of Three Hundred Fifteen (315.00) Dollars with interest at 8 per cent per annum from May, 16, 1908, the further sum of Thirty (30.00) Dollars, attorneys fees, all in gold coin of the United States of America, and Plaintiff's costs and disbursements herein, taxed at Fourteen and (14.50) 50|100 Dollars, and that Execution issue to enforce this Judgment; it is further,

ADJUDGED, CONSIDERED AND ORDERED, That the real property heretofore attached in said action, hereinbefore described, be sold in manner prescribed by law, and that the proceeds of said sale be

applied in payment of said judgment and the excess, if any, be paid to the Clerk of this Court.

L. T. HARRIS,

Judge.

Attest:

Z. N. Agee,

Clerk.

(Endorsed on back is the following:—)

*In the Circuit Court of the State of Oregon
for Douglas County.*

JNO W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,

Defendants.

JUDGMENT ORDER.

May 16.

ENTERED.

Vol. 18, P. 521-522.

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

STATE OF OREGON,

County of Douglas—ss.

TO THE SHERIFF OF THE COUNTY OF
DOUGLAS, STATE OF OREGON, GREET-
ING:

In the Name of the State of Oregon, and in conformity with the foregoing judgment order and decree, you are hereby commanded to make sale of the

above described property to satisfy the sum of Three Hundred Fifteen Dollars (\$315.00) with interest thereon at the rate of 8 per cent per annum from the 16th day of May, 1908, and the further sum of Thirty Dollars, (\$30.00) with interest thereon at the rate of 8 per cent per annum from the 16th day of May, 1908, and the further sum of Fourteen and 50/100 Dollars (\$14.50) costs and disbursements and the cost of and upon this Writ, and have the same in said Circuit Court within 60 days after you receive this writ.

WITNESS my hand and the seal of said Circuit Court this 14th day of July, 1908.

[Seal]

E. H. LENOX,
Clerk.

(Endorsed on the back of this Execution is the following:—)

IN THE CIRCUIT COURT.

JOHN W. JOHNSON,

vs.

AARON JOHNSON, ET AL.

Received July 14, 1908.

B. FENTON,
Sheriff.

By R. T. Ashworth, Deputy.

EXECUTION.

To the Sheriff of Douglas County, returnable in 60 days.

Judgment\$315.00

Interest8 per cent .

Attorney's Fee 30.00

Disbursements and Costs 14.50

Filed Aug. 31, 1908.

E. H. LENOX,

Clerk.

By Blanche Reed, Deputy.

Judgment rendered May 16, 1908.

This Writ issued at the instance of Coshow & Rice, Attorneys; E. H. Lenox, Clerk.

STATE OF OREGON,

County of Douglas—ss.

I, B. Fenton, Sheriff of Douglas County, Oregon, hereby certified that pursuant to the attached execution and Order of Sale, duly issued out of the Circuit Court of the State of Oregon for Douglas County, under the seal of said Court and dated the 14th day of July, 1908, directing me to sell in the manner prescribed by law, the Northwest quarter of Section 10, Township 21 South, of Range 7 West, W. M., in Douglas County, Oregon, to satisfy that certain judgment, duly rendered and entered of record in the said Circuit Court, in favor of John W. Johnson, Plaintiff, and against Aaron Johnson and Eline Engebritson, defendants, for the sum of \$315.00, with interest at the rate of eight per cent per annum from the 16th day of May, 1908, and a further sum of \$30.00 Attorneys fees, all in gold coin of the United States of America, and the further sum of \$14.50, costs and disbursements, together with interest upon said Attorneys fees and costs and disbursements at the rate of six per cent per annum, from and after the 16th day of

May, 1908, on the 16th day of May, 1908.

I did, on the 22nd day of August, at the hour of 1 o'clock P. M., expose said real property for sale, and there being no bidders I did by public proclamation continue the sale for one week, and on the 29th day of August, 1908, at the hour of 1 o'clock P. M., again expose said real property for sale at public auction, and did sell the same to the Plaintiff in said execution, namely: John W. Johnson, for the sum of \$380.04, said John W. Johnson being the highest bidder and the said sum of \$380.04 being the highest sum bid at said sale.

That I did thereupon execute and deliver to the said John W. Johnson a Certificate of Sale, in manner and form as prescribed by law.

That before proceeding to said sale, I caused to be published in the Roseburg Review, a newspaper printed, published and of general circulation in Douglas County, Oregon, once each week for four successive weeks, immediately prior to the 28th day of August, 1908, a notice of said sale, a copy of which notice, together with the proof of publication therein, is hereto attached, marked exhibit "A", and made a part of this return.

I did on the 19th day of July, 1908, cause like notices of said sale to be posted in three of the most public places in Douglas County, Oregon, to wit: One upon the Bulletin Board at the main entrance of the Court House in Roseburg, Douglas County, Oregon; one of said notices was posted at the Post Office in Glendale, Douglas County, Oregon; and another of

said notices was posted at the Post Office in Myrtle Creek, Douglas County, Oregon.

That all of said notices were posted conspicuously and in such a manner as to be easily read by all persons passing along or by said public places.

That the notices as posted aforesaid were in all respects similar to the copy of notice published in the Roseburg Review, a copy of which is embodied in Exhibit "A" of this return.

That I have applied the said sum of \$380.04 received from the sale of said land to the payment of the costs of said sale, amounting to \$12.50, and the balance, \$365.54, to the payment of Plaintiff's Judgment, attorney fees, costs and disbursements, and herewith return said execution, satisfied in full.

Dated at Roseburg, Oregon, August 31, 1908.

B. FENTON,

Sheriff of Douglas County, Oregon.

*In the Circuit Court of the State of Oregon
for the County of Douglas.*

Exhibit "A."

COPY.

NOTICE OF SHERIFF'S SALE.

In the Circuit Court of the State of Oregon, for Douglas County.

John W. Johnson, Plaintiff,

vs.

Aaron Johnson and Eline Engebritson, Defendants.

By virtue of a Writ of Execution and order of Sale, duly issued out of and under the seal of the above en-

titled Court, in the above entitled action, to me directed and dated the 16th day of May, 1908, commanding me to satisfy the judgment in the above entitled cause, duly rendered, entered and docketed in the above entitled Court on the 16th day of May, 1908, by the sale of the real property theretofore, on the 21st day of April, 1907, duly attached at the suit of the Plaintiff in the above entitled cause; said judgment being in favor of the above named Plaintiff and against the above named Defendants, for the sum of Three Hundred Fifteen (\$315.00) Dollars, with interest at the rate of eight (8) per cent per annum from the 16th day of May, 1908, and further sum of Thirty (\$30.00) Dollars attorneys' fees all payable in United States Gold Coin, and Plaintiff's costs and disbursements in said action taxed at Fourteen and (\$14.50) 50-100 Dollars, with interest on said sum of Attorney's fees and costs and disbursements at the rate of six (6) per cent per annum from the 16th day of May, 1908, and the costs upon and in execution of said Writ of Execution; now therefore, I will expose for sale and will sell to the highest bidder for cash at one o'clock in the afternoon on Saturday, the 22nd day of August, 1908, at the Court House front door in Roseburg, Douglas County, Oregon, all the right, title and interest the said Defendants or either of them had in and to said attached real property on the 21st day of April, 1907, or at any time since; said real property being described as follows, to wit:

The Northwest quarter (NW $\frac{1}{4}$) of Section 10, Township 21 South, Range 7 West, Willamette Me-

ridian, in Douglas County, Oregon, to satisfy said judgment, costs and all accruing costs.

Dated this 18th day of July, 1908.

B. FENTON,

Sheriff of Douglas County, Oregon.

Office of

THE ROSEBURG REVIEW

Roseburg, Oregon.

Issued every Monday and Thursday.

I, M. M. Miller, being first duly sworn, say I am the principal Clerk of the Roseburg Review.

That said Review is a semi-weekly newspaper published and issued semi-weekly and regularly at Roseburg, in Douglas County, State of Oregon, and is of general circulation in said County and State.

That the notice, of which the one hereto attached is a true and correct copy, was published in said paper once a week for four weeks, being published five times; the first on the 20th day of July, 1908, and the last on the 17th day of August, 1908.

That said notice was published in the regular and entire issue of said paper during the said period and times of publication, and that the said notice was published in the newspaper proper and not in a supplement.

M. M. MILLER.

Subscribed and sworn to before me this 25th day of August, 1908.

[Seal.]

G. V. WIMBERLY,

Notary Public for Oreg.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JNO. W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

This cause coming on to be heard upon Motion of Plaintiff for Judgment by Default, Plaintiff appearing by his Attorneys, Coshow & Rice, and neither of Defendants appearing; And,

It appearing to the satisfaction of the Court that both of said Defendants were duly served with summons herein, long prior to this date, and that neither of said Defendants have answered the Complaint of Plaintiff, or otherwise pleaded thereto, it is

Adjudged and Considered that said Defendants and both of them are in default and their default is hereby entered; and,

It appearing to the satisfaction of the Court that said Defendants are indebted to the Plaintiff in the full sum of Two hundred seventy-five (275.00) Dollars, in Gold Coin of the United States of America, with interest thereon in like gold coin at the rate of eight per cent per annum from the 2nd day of March, 1904, less the sum of Twenty (20.00) dollars paid April 8th, 1904, and the further sum of Twenty (20.00) dollars, paid May 10th, 1904;

That Thirty Dollars (30.00) is a reasonable Attorney fee; And,

It further appearing to the satisfaction of the Court that heretofore, to wit, on the 21st day of April, 1907, at the suit of Plaintiff herein, the following real property belonging to the Defendant Aaron Johnson, was duly attached, to wit; The Northwest quarter, Section Ten, Township 21, South, Range 7 West, Willamette Meridian, in Douglas County, Oregon, It is Therefore,

Considered and Adjudged that Plaintiff have and recover off and from the Defendants the full sum of Three Hundred Fifteen (315.00) Dollars, with interest at eight per cent per annum from May 16th, 1908, and the further sum of Thirty (30.00) dollars, Attorneys fees all in gold coin of the United States of America, and Plaintiff's costs and disbursements herein, taxed at Fourteen and (14.50) 50|100 dollars and that Execution issue to enforce this Judgment. It is further,

Adjudged, Considered and Ordered that the real property heretofore attached in said action, hereinbefore described, be sold in manner prescribed by law, and that the proceeds of said sale be applied in payment of said Judgment and the excess, if any, be paid to the Clerk of this Court.

(Record Signed).

L. T. HARRIS,
Judge.

Attest:

Z. N. Agee,
Clerk.

Dated May 16th, 1908.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,

Defendants.

MOTION.

Comes now the Plaintiff above named and moves the Court for an order confirming the sale of real property heretofore made upon the execution of the above entitled action.

This motion is based upon the files and papers in the above entitled cause, including the return of the Sheriff of Douglas County for the sale of real property, attached in this action on the 1st day of April, 1907.

COSHOW & RICE,

Attorneys for Plaintiff.

(Endorsed on back is the following:—)

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,

Defendants.

MOTION.

Filed Sep. 16, 1908.

E. H. LENOX,

County Clerk.

*In the Circuit Court for Douglas County,
State of Oregon.*

Be It Remembered, That at a regular term of the Circuit Court of the State of Oregon, for Douglas County, began and held in the court room at the court house in Roseburg, Oregon, on Monday the 12th day of Oct. 1908, at which were present:

Hon. J. W. HAMILTON,
Judge.

GEO. M. BROWN,
Pros. Atty.

E. H. LENOX,
Clerk.

B. FENTON,
Sheriff.

Among other proceedings the following was had on the 12th day of Oct., 1908, being the first judicial day of the term, to wit:

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

This matter coming on now to be heard upon the motion of the Plaintiff for confirmation of the sale of real property heretofore made upon the execution issued out of this court and cause; and

It appearing that the Sheriff's report of said sale has been on file more than ten (10) days prior to this date and no objections have been made thereto, and

no objections are now made to the confirmation of said sale; and,

It further appearing to the satisfaction of the Court that on the first day of April, 1907, the Sheriff of Douglas County, Oregon, by virtue of a writ of attachment duly issued out of the above entitled court and cause, did attach, secure and levy upon the Northwest quarter of Section Ten (10), in Township Twenty-one (21) South of Range Seven (7) West, of the Willamette Meridian, in Douglas County, Oregon, and did thereafter by virtue of said execution duly expose for sale at public auction in the manner prescribed by law, after due notice and advertisement of said sale as prescribed by law, and did sell to John W. Johnson, the said Plaintiff, the said real property for the sum of Three Hundred Fifteen (315.00) Dollars; and

It appearing to the satisfaction of the Court that said sale is in all respects regular; It is, therefore,

Ordered, Adjudged and Decreed that said sale be, and is hereby confirmed, and the Sheriff of Douglas County is hereby directed to make and deliver to the Plaintiff a good and sufficient deed, conveying said premises and all the right, title and interest of the Defendants in and to the same on the first day of April, 1907, or at any time since, unless the same be redeemed within one year from this date.

J. W. HAMILTON,

Judge.

Attest:

E. H. Lenox, Clerk.

Vol. 19, P. 14-15.

10|12|08.

STATE OF OREGON,

County of Linn—ss.

I, Z. N. Agee, being first duly sworn, on oath say,

That I was County Clerk of Douglas County on the first day of April, 1907, having been elected such Clerk at the regular biennial June election of the State of Oregon in June, 1906, and served as such County Clerk from the first Monday in July, 1906, until the first Monday in July, 1908;

That on the first day of April, 1907, O. P. Coshow swore to a complaint and an affidavit for a writ of attachment in a certain action at law entitled John W. Johnson, Plaintiff, vs. Aaron Johnson and Eline Engebritson, Defendants, before me, as such County Clerk;

That immediately thereafter I filed the same and certified to the affidavit of the said O. P. Coshow to said Complaint and by inadvertence omitted to certify to the affidavit for writ of attachment;

That I examined the files on January 5, 1911, including said complaint and said affidavit in the said action at law and refreshed my memory thereby;

That I am very positive that I administered the oath to the said O. P. Coshow and that he took the said oath before me;

That I do not have a distinct recollection of this particular instance but I am very positive that I never would have certified to the affidavit of the complaint

except it had been sworn to and that the said complaint and said affidavit for attachment were filed almost simultaneously, the complaint having been filed first; That I was always very particular to formally administer the oath when an affidavit was taken before me.

Z. N. AGEE.

Subscribed and sworn to before me this 10th day of January, 1911.

[Seal.]

JOHN M. WILLIAMS,
Notary Public for Oregon.

STATE OF OREGON,

County of Douglas—ss.

I, O. P. Coshow, being first duly sworn, say that I am a member of the law firm of Coshow & Rice of Roseburg, Oregon.

That on the first day of April, 1907, as an attorney for the plaintiff in that certain action entitled John W. Johnson, Plaintiff, vs. Aaron Johnson and Eline Engebritson, defendants, filed in the Circuit Court of the State of Oregon for Douglas County on said first day of April, 1907;

That at said time, the plaintiff, John W. Johnson, was not in Douglas County, Oregon, so as to verify the complaint, and for that reason, and as his attorney, I verified the same and made the affidavit in his behalf for writ of attachment.

That the verification of said complaint and the affidavit for the writ of attachment were both made before Z. N. Agee, the County Clerk of said Douglas County and ex-officio Clerk of said Circuit Court;

That in accordance with my practice in such cases when I was obliged to verify a pleading or make other affidavit for an absent client. I prepared the same and made such affidavits before the County Clerk before filing such pleading or other document;

That the said Z. N. Agee, as County Clerk, formally administered the oath before certifying thereto;

That I have personally this day examined the said complaint and said affidavit for writ of attachment and both were filed on the first day of April, 1907, and the affidavits to both were dated on that date;

That the said County Clerk certified to the affidavit to the complaint, but inadvertently omitted to certify to the affidavit for writ of attachment.

That before the said affidavit for writ of attachment was filed the said Z. N. Agee, County Clerk, duly administered to me the oath and I was by said Z. N. Agee duly sworn to said affidavit for writ of attachment before the said affidavit was filed by the said Z. N. Agee.

O. P. COSHOW.

Subscribed and sworn to before me this sixth day of January, 1911.

[Seal.]

A. N. ORCUTT,

Notary Public for Oregon.

(Endorsed on the cover as follows:—)

In the Circuit Court for Douglas County.

State of Oregon

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON, et al.,

Defendants.

PETITION.

Filed Jan. 16th, 1911.

E. H. LENOX,

Clerk.

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,

Defendants.

PETITION.

The undersigned, your petitioner, respectfully represents that the above named plaintiff commenced an action at law against the above named defendants in the above entitled Court by filing his complaint with the Clerk of said Court on the first day of April, A. D., 1907, to recover from the defendants the sum of Two Hundred Seventy-five (275) Dollars in gold coin of the United States of America with interest thereon in like gold coin, from the second day of March, 1904, at the rate of 8 per cent per annum less the sum of Twenty (20) Dollars, paid April 8, 1904, and less the further sum of Twenty (20) Dollars, paid May 10, 1904, and for judgment against said defendants for Thirty (30) Dollars, Attorneys' fees and plaintiff's costs and disbursements;

That after filing said complaint and on the same day the plaintiff caused his affidavit for attachment to be filed in said action and an undertaking for attachment whereupon a writ of attachment was duly issued out of said Court and Cause by the Clerk of said Court and on the first day of April, 1907, delivered to the Sheriff of Douglas County, Oregon, for service;

That on the same day a summons was placed in the hands of the Sheriff of Douglas County, Oregon;

That such proceedings were had on the said writ of attachment;

That the said sheriff by virtue thereof duly returned his certificate to the effect that he had on said first day of April duly attached all the right, title and interest of the said defendants, or either of them, in and to the Northwest quarter of Section 10, in Township 21 South, Range 7 West, of the Willamette Meridian, Douglas County, Oregon, on the first day of April, 1907;

That the said summons was returned on the 8th day of May, 1907, indorsed by the Sheriff to the effect that he could not find either of the defendants in Douglas County, Oregon;

That thereafter such proceedings were had in the above entitled action that by the order of the Judge of the above entitled Court, upon the affidavit of the plaintiff showing that neither of the defendants resided within the State of Oregon or could be found therein, and that both of them resided in the State of Washington, and that the said real property had been

duly attached in said action, service of summons in said action was made by publication once a week for six weeks in the Roseburg Review, a newspaper published and having a general circulation within the State of Oregon;

That thereafter, to wit: May 16, 1908, proof of the service of said publication was duly filed in the above entitled court and cause and on said day upon the motion of the plaintiff, judgment was duly rendered and entered on the 16th day of May, 1908, in favor of the above named defendants for the full sum of Three Hundred Fifteen (315) Dollars with interest at the rate of 8 per cent per annum from May 16, 1908, and the further sum of Thirty (30) Dollars, Attorneys' fees, all in gold coin of the United States of America, and plaintiff's costs and disbursements herein taxed at fourteen and 50/100 (14.50) Dollars;

That neither of the above defendants made or filed any appearance in said action but made default therein and the default of both defendants was duly entered;

That thereafter at the suit of the Plaintiff, the judgment creditor aforesaid, to wit: on the 14th day of July, 1908, the clerk of said Court duly issued an execution and order of sale upon said judgment said judgment having directed the sale of the above described real property to satisfy said judgment. Said writ of execution was duly delivered to the Sheriff of Douglas County, Oregon, on the 14th day of July, 1908, and after due notice and advertisement of said sale, in manner and form as required by law, the said

real property was duly exposed for sale at public auction and was sold to John W. Johnson for the sum of Three Hundred Eighty and 4/100 (380.04) Dollars and said execution was returned satisfying said judgment in full on the 31st day of August, 1908;

That thereafter and at the regular October Term for the above entitled Court for October, 1908, said sale was, upon the motion of the plaintiff, duly confirmed and thereafter no redemption having been made of the sale of said premises a deed was duly issued and delivered by the Sheriff of Douglas County, Oregon, to the said plaintiff and judgment creditor, the said John W. Johnson;

That by inadvertence the then Clerk of the above entitled Court, Z. N. Agee, omitted to certify to the oath taken by O. P. Coshow, an Attorney for the said plaintiff in the affidavit for attachment;

That the said affidavit was duly subscribed by said O. P. Coshow, and the oath was duly and regularly administered by said Z. N. Agee, County Clerk of Douglas County, Oregon, and ex-officio clerk of the above entitled court, but by an oversight he omitted subscribing the jurat certifying to the administering of the said oath;

That for a more complete and thorough understanding of the facts herein briefly set forth reference is hereby made to the affidavits of said Z. N. Agee and O. P. Coshow hereto attached and hereby made a part of this petition, to the judgment roll, execution and return of the sheriff thereon in the above entitled action, which are a part of the files and records of

this court and the above entitled cause;

WHEREFORE your petitioner prays for an order of the above entitled Court nunc pro tunc directing and permitting the said Z. N. Agee, formerly County Clerk for Douglas County, Oregon, to subscribe the jurat to the said affidavit for attachment certifying to the administering of said oath by said O. P. Coshow, upon which oath and affidavit the said writ of attachment was administered.

And your petitioner will ever pray.

JOHN W. JOHNSON,

Petitioner.

By O. P. Coshow, His Attorney.

STATE OF OREGON,

County of Douglas—ss.

I, O. P. Coshow, being first duly sworn, say that I am an attorney for the above named petitioner; that I have personal knowledge of the facts stated in the foregoing petition; that said petition is true as I verily believe; that I make this verification for and in behalf of the said petitioner.

O. P. COSHOW.

Subscribed and sworn to before me this 16th day of January, 1911.

[Seal.]

J. C. FULLERTON,
Notary Public for Oregon.

REGULAR TERM.

MONDAY, JANUARY 30TH, 1911.

*In the Circuit Court of the State of Oregon
for Douglas County.*

Be It Remembered, That at a regular term of the Circuit Court of the State of Oregon for Douglas County, began and held in the Court room at the Court house in Roseburg, Oregon, on Monday the 16th day of January, 1911, at which were present:

Hon. L. T. HARRIS,
Judge.

E. H. LENOX,
Clerk.

GEO. K. QUINE,
Sheriff

GEO. M. BROWN,
Pros. Atty.

Among other proceedings the following were had on Monday the 30th day of January, 1911, being the eighth judicial day of the term, to wit: Hon. J. W. Hamilton, Judge Presiding:

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

This matter coming on heretofore, to wit: on the 20th day of January, 1911 and taken under advisement until this time;

And it now appearing to the satisfaction of the Court that on the first day of April, 1907, O. P. Coshow, as attorney for the above named plaintiff, and for and in behalf of said plaintiff made an affidavit for attachment for the plaintiff, and made oath to said

affidavit before Z. N. Agee, then County Clerk for Douglas County, Oregon, and thereafter immediately filed said affidavit for attachment and a writ of attachment was duly issued thereon;

And it further appearing that by an oversight of the said Z. N. Agee, then County Clerk the said affidavit and oath made for and in behalf of the plaintiff by O. P. Coshow as aforesaid, was not certified;

It is therefore ordered that the said Z. N. Agee be and hereby is permitted, ordered and directed to certify to said affidavit for attachment now on file in the above entitled court and cause and to which the said O. P. Coshow made oath as aforesaid, said certification to be made now as for and on the 1st day of April, 1907, and that the Clerk of this Court attach the seal of this Court to said affidavit now as for and of this said first day of April, 1907.

J. W. HAMILTON,

Judge.

(Endorsed on the back is the following:—)

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

ORDER.

Filed Jan. 30, 1911.

E. H. LENOX,
Co. Clerk.

From the Office of Coshow & Rice.
Vol. 20, P. 250.

STATE OF OREGON,

County of Douglas—ss.

I, E. H. Lenox, County Clerk of Douglas County, State of Oregon and ex-officio Clerk of the Circuit Court in and for said County and State, do hereby certify that the foregoing Transcript of the Papers in the case of John W. Johnson, Plaintiff vs. Aaron Johnson and Eline Engebritson, Defendants is a true and correct transcript of such original papers, being all of the papers in said case, as the same appear on file and of record in my office, care and custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 3rd day of June, A. D., 1911.

E. H. LENOX,
County Clerk.

[Seal.]

By Blanche Reed, Deputy Clerk.

Filed Mar. 15, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 2.]

AARON JOHNSON,

to

ANDREW JOHNSON.

This Indenture made this 21st day of May, A. D., 1904, between Aaron Johnson (bachelor) party of the first part, and Andrew Johnson, party of the second part, Witnesseth; that the said party of the first part, for and in consideration of the sum of One (1)

Dollars, lawful money of the United States of America, to me in hand paid by the said party of the second part, does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs, executors, administrators and assigns, the following real estate lying and being in the County of Douglas, State of Oregon, described as follows, to wit:

The northwest quarter (NW $\frac{1}{4}$) of Section No. ten (10), in township No. Twenty-one south (21 S.), of Range No. Seven west (7 W.), containing 160 acres. With all and singular the hereditaments and appurtenances to the same belonging or appertaining, the reversion or reversions, the remainder or remainders, rents, issues and profits thereof.

To have and to hold the above granted premises unto the said party of the second part, his heirs, executors, administrators, and assigns forever, with all the privileges and appurtenances thereto belonging. And the said party of the first part does covenant for himself and his heirs, executors, administrators and assigns to and with the said party of the second part, his heirs, executors, administrators and assigns as follows: 1st. That the said party of the first part is seized of the said premises in fee simple, and has good right to convey the same. 2nd. That the said party of the second part shall quietly enjoy the said premises. 3rd. That the said premises are free from all incumbrances. 4th. That the said party of the first part will warrant and defend the title to the same for-

ever against all lawful claims and demands whatsoever.

In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed and sealed in the presence of

AARON JOHNSON. [Seal.]

STATE OF WASHINGTON,

County of Chehalis—ss.

I, Wm. B. Ogden, a Notary Public, in and for the State of Washington, residing at Hoquiam in said county and duly commissioned and sworn, do hereby certify that on this 21st day of May, A. D., 1904, personally appeared before me Aaron Johnson to me known to be the individual described in and who executed the within instrument and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned. Given under my hand and official seal this 21st day of May A. D., 1904.

[Seal.]

WM. B. OGDEN,

Notary Public in and for said State, residing at Hoquiam in said County.

Commission expires -----

STATE OF WASHINGTON,

County of Chehalis—ss.

I, J. W. Stamper, Clerk of the Superior Court for Chehalis County, State of Washington, holding terms at Montesano, for the County of Chehalis, which is a court of record having common law jurisdiction and

a seal do hereby certify that Wm. B. Ogden, whose name is subscribed to the certificate of acknowledgement of the annexed instrument and therein written, was, at the time of taking such acknowledgement a Notary Public in and for said county and state, duly appointed and qualified, and duly authorized to take the same. And further that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to the said certificate of Acknowledgement is genuine. I further certify that said instrument is executed and acknowledged according to the laws of this state.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court at Montesano, Wash., this 24th day of May, A. D., 1904.

[Seal.]

J. W. STAMPER,

Clerk of Superior Court for Chehalis County.

By E. A. Philbrick, Deputy.

Filed and recorded June 7, 1904.

D. R. SHAMBROOK,

County Clerk.

By Flossie P. Shambrook, Deputy.

Deeds Vol. 49, page 158-9.

STATE OF OREGON,

County of Douglas—ss.

I, E. H. Lenox, County Clerk and ex-officio Recorder of Conveyances, of said Douglas County, State of Oregon, hereby certify that I have prepared the foregoing copy of deed, recorded in Book 49, at page 158-9 of the Deed Records of said County kept in my office, and of which I am keeper, and have com-

pared the same with the original thereof, and that the same is a true and correct transcript of the original record of said deed as recorded in said book, and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this the 9th day of March, A. D., 1912.

[Seal.]

E. H. LENOX.

STATE OF OREGON,

Douglas County—ss.

I, G. W. Wonacott, sole Judge of the County Court of the County of Douglas, State of Oregon, hereby certify that the attestation of the foregoing copy of deed is in due form and is made by the proper officer.

Witness my hand at Roseburg, Oregon, this the 9th day of March, 1912.

G. W. WONACOTT,

County Judge.

STATE OF OREGON,

County of Douglas—ss.

I, E. H. Lenox, County Clerk of Douglas County, State of Oregon, and ex-officio Clerk of the County Court of said County, hereby certify that G. W. Wonacott, whose signature is affixed to the foregoing attestation is the Presiding and sold Judge of the County Court of Douglas County, State of Oregon, and is duly commissioned and qualified.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County Court on this

the 9th day of March, A. D., 1912.

E. H. LENOX.

Filed Mar. 15, 1912.

A. M. CANNON,

Clerk U. S. District Court.

[Plaintiff's Exhibit 3.]

ANDREW JOHNSON, ET UX,

to AARON JOHNSON.

This indenture made this 8th day of April in the year of our Lord, One Thousand Nine Hundred and Seven, between Andrew Johnson and Emma Johnson, wife, the parties of the first part and Aaron Johnson the party of the second part, Witnesseth; that the said parties of the first part for and consideration of the sum of other valuable considerations and One (1) Dollars lawful money of the United States to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged do by these presents Grant, bargain, sell, convey and confirm unto the said party of the second part and to his heirs, executors, administrators and assigns the following described tract, lot or parcel of land, situate, lying and being in the County of Douglas, State of Oregon, and particularly bounded and described as follows, to wit:

The Northwest quarter (NW $\frac{1}{4}$) of Section Ten (10), in Township numbered twenty one (21) south of Range seven (7) west of Willamette Meridian, containing 160 acres according to the United States Government survey thereof, together with all and singular the tenements, hereditaments and appur-

tenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. To have and to hold the said premises unto the said party of the second part and to his heirs, executors, administrators and assigns, forever. And the said parties of the first part for themselves and for their heirs, executors, and administrators do by these presents covenant that they are the owners in fee simple absolute of all and singular the above granted and described premises and the appurtenances; that they have good and lawful right to sell and convey the same; that the same are free from all liens or incumbrances and that they hereby warrant and will forever defend the same from all lawful claims whatsoever.

In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed sealed and delivered in the presence of
Carl Lovigren,
C. A. Olson.

ANDREW JOHNSON, [Seal.]

EMMA JOHNSON, [Seal.]

STATE OF WASHINGTON,

County of King—ss.

I, C. A. Olson, a Notary Public in and for the State of Washington, residing at Preston, in the above named County and State, duly commissioned, sworn and qualified, do hereby certify that Andrew Johnson and Emma Johnson, his wife, to me known to be the individuals described in and who executed the within

instrument personally appeared before me this day and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 8th day of April, A. D., 1907.

C. A. OLSON,

Notary Public in and for the State of Washington,
residing at Preston in said County.

[Seal.]

Filed and recorded April 24th, 1907.

Z. N. AGEE,

County Clerk.

By G. V. Wimberly, Deputy.

Vol. 57 Page 103 Deed Records.

STATE OF OREGON,

County of Douglas—ss.

I, E. H. Lenox, County Clerk and ex-officio Recorder of Conveyances, of said Douglas County, State of Oregon, hereby certify that I have prepared the foregoing copy of deed, recorded in Book 57 at page 103, of the Deed Records of said County kept in my office, and of which I am keeper, and have compared the same with the original thereof, and that the same is a true and correct transcript of the original record of said deed as recorded in said Book, and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my seal of office this the 9th day of March, A. D., 1912.

[Seal.]

E. H. LENOX.

STATE OF OREGON,

Douglas County—ss.

I, G. W. Wonacott, sole Judge of the County Court of the County of Douglas, State of Oregon, hereby certify that the attestation of the foregoing copy of deed is in due form and is made by the proper officer.

Witness my hand at Roseburg, Oregon, this the 9th day of March, 1912.

G. W. WONACOTT,
County Judge.

STATE OF OREGON,

County of Douglas—ss.

I, E. H. Lenox, County Clerk of Douglas County, State of Oregon, and ex-officio Clerk of the County Court of said County, hereby certify that G. W. Wonacott, whose signature is affixed to the foregoing attestation is the Presiding and sole Judge of the County Court of Douglas County, State of Oregon, and is duly commissioned and qualified.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County Court on this the 9th day of March, A. D., 1912.

[Seal.]

E. H. LENOX.

Filed Mar. 15, 1912.

A. M. CANNON,

Clerk U. S. District Court.

[Plaintiff's Exhibit 4.]

AARON JOHNSON,

to

NORTH STAR LUMBER CO.

This Indenture made this 21st day of February in the year of our Lord one thousand nine hundred and seven, between Aaron Johnson, an unmarried man, farmer, at Edberg of the Province of Alberta, Canada, party of the first part, and North Star Lumber Company, a corporation organized and existing under the laws of Minnesota of the County of and State of, party of the second part, WITNESSETH, that the said party of the first part in consideration of the sum of Two Thousand Dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged does hereby grant, bargain, sell and convey unto the said party of the second part its successors and assigns forever, all that tract or parcel of land lying and being in the County of Douglas and State of Oregon, described as follows, to wit:

The Northwest quarter (NW $\frac{1}{4}$) of Section ten (10), in Township twenty one (21) South, Range seven (7) West, W. M.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining unto the said party of the second part its successors and assigns forever.

And the said Aaron Johnson party of the first part for himself his heirs, executors and administrators does covenant with the said party of the second part its successors and assigns, that he is well seized in fee of the lands and premises aforesaid, and has good right to sell and convey the same in manner and form aforesaid; and that the same are free from all incumbrances and that the above bargained and granted lands and premises, in the quiet and peaceable possession, of the said party of the second part its successors and assigns against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will warrant and defend.

In Testimony Whereof the said party of the first part has hereunto set hand and seal the day and year first above written.

Signed sealed and delivered in presence of
Robert D. Fleming,
John McLeod.

AARON JOHNSON, [Seal.]

TOWN OF CAMROSE,
Northwest Territories,
Alberta, Canada—ss.

On this eighth day of March, A. D., 1907, before me, a Notary Public within and for said County, personally appeared Aaron Johnson and his two witnesses, Robert D. Fleming and John McLeod, to me known to be the persons described in and who executed the within instrument and acknowledged that he

executed the same as their free act and deed.

FRANCOIS ADAM,

a Notary Public.

My Commission Expires December 31st, 1907.

[Seal.]

Filed and recorded April 24th, 1907.

Z. N. AGEE,

County Clerk.

By G. V. Wimberly, Deputy.

Deed Record Vol. 57, page 103.

STATE OF OREGON,

County of Douglas—ss.

I, E. H. Lenox, County Clerk and ex-officio Recorder of Conveyances, of said Douglas County, State of Oregon, hereby certify that I have prepared the foregoing copy of deed, recorded in Book 57 at page 103 of the Deed Records of said County kept in my office, and of which I am keeper, and have compared the same with the original thereof, and that the same is a true and correct transcript of the original record of said deed as recorded in said book, and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this the 9th day of March, A. D., 1912.

[Seal.]

E. H. LENOX.

STATE OF OREGON,

Douglas County—ss.

I, G. W. Wonacott, sole Judge of the County Court of the County of Douglas, State of Oregon, hereby

certify that the attestation of the foregoing copy of deed is in due form and is made by the proper officer.

Witness my hand at Roseburg, Oregon, this the 9th day of March, 1912.

G. W. WONACOTT,
County Judge.

STATE OF OREGON,
County of Douglas—ss.

I, E. H. Lenox, County Clerk of Douglas County, State of Oregon, and ex-officio Clerk of the County Court of said County, hereby certify that G. W. Wonacott, whose signature is affixed to the foregoing attestation is the Presiding and sole Judge of the County Court of Douglas County, State of Oregon, and is duly commissioned and qualified.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County Court on this the 9th day of March, A. D., 1912.

[Seal.]

E. H. LENOX,

Filed Mar. 15, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Plaintiff's Exhibit 5.]

Hoquiam, Washington, Mar. 28th 1907. No.....

THE FIRST NATIONAL BANK.

of Hoquiam.

Pay to the order of First Nat. Bank\$2000.00

Two thousandDollars.

F. F. WILLIAMS.

Paid Apr. 12, 1907, The First National Bank, Hoquiam, Wash.

Filed Mar. 15, 1912.

A. M. CANNON,
Clerk U. S. District Court.

[Defendants' Exhibit A.]

*In the Circuit Court of the State of Oregon
for Douglas County.*

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGEBRITSON,
Defendants.

Petition for Correcting Clerical Error in Judgment.
To the Honorable J. W. Hamilton, Judge of the above
entitled Court:

The undersigned, your petitioner, respectfully represents that on the first day of April, A. D., 1907, John W. Johnson began an action in the above entitled Court against the above named defendants Aaron Johnson and Eline Engebritson to recover the sum of Two Hundred Seventy-five (275) Dollars in gold coin of the United States of America, together with interest thereon in like gold coin from the 2nd day of March, 1904, at the rate of 8 per cent per annum less the sum of Twenty (20) Dollars paid April 8, 1904, and the further sum of Twenty (20) Dollars, paid May 10, 1904, and further sum of Thirty (30) Dollars attorneys' fees and plaintiff's costs and disbursements in said action to be taxed;

That thereafter and on the same day the plaintiff in said action cause to be filed therein his affidavit for writ of attachment and his undertaking for writ of attachment, both said affidavit and undertaking being in form and substance as required by law;

That thereupon and on the said first day of April, 1907, the County Clerk of said Douglas County, and ex-officio clerk of the above entitled court, duly issued a writ of attachment directed to the sheriff of Douglas County, Oregon, commanding him to levy upon and attach sufficient property of the above named defendants to satisfy the demand of the said plaintiff in said action;

That thereafter and on said first day of April, 1907, the sheriff duly returned his writ of attachment:

That thereafter said sheriff of Douglas County, Oregon duly and regularly filed with said county clerk his certificate wherein the said sheriff certified that he had on the first day of April 1907, duly levied upon seized and attached all of the right, title and interest of the defendant Aaron Johnson in and to the Northwest quarter of Section 10, Township 21 South, Range 7 West of the Willamette Meridian, Douglas County, State of Oregon;

That said certificate of attachment was thereafter and on the first day of April, 1910, duly filed by said Clerk in said Court and cause and was thereafter duly and regularly recorded in the record of attachments of said Court and said County in volume..... in pagethereof;

That thereafter, to wit: on May 16, 1908, such pro-

ceedings were had that the said John W. Johnson plaintiff in said action recovered judgment by consideration of the above entitled Court against the said defendants Aaron Johnson and Eline Engebritson for the full sum of Three hundred fifteen (315) Dollars, with interest thereon at the rate of 8 per cent per annum from the 16th day of May, 1908, the further sum of Thirty (30) dollars attorneys fees and disbursements taxed at fourteen and 50|100 (14.50) dollars; and an order for the sale of the property attached in said action as aforesaid;

That in entering said judgment by the misprision of the clerk of said court in the judgment and order of sale entered in said action, the date of the attachment was described as the 21st day of April, 1907, instead of the first day.

Your petitioner respectfully refers your Honor to the complaint in said action, the affidavit and undertaking for attachment and the certificate of the sheriff levying and attaching said real property together with the other papers filed in said action and the journal entries made therein for the verification and proof of the statements in this petition made.

Wherefore, Your petitioner prays for an order of this Court correcting the misprision of the Clerk of this court in inserting in said judgment and order of sale the 21st day of April, 1907, instead of the first day of April, 1907;

That the said judgment and order of sale be corrected by reciting the date of the attachment in accordance with the facts, to wit: as having been made on

the first day of April, 1907, and directing the sale of all the right, title and interest of the said defendants Aaron Johnson and Eline Engebritson in and to said premises on the first day of April, 1907, or at any time thereafter and that this order be made as of the 16th day of May, 1908;

And your petitioner will ever pray.

JOHN W. JOHNSON,

Petitioner.

By O. P. Coshow of his Attorneys.

STATE OF OREGON,

County of Douglas—ss.

I, O. P. Coshow, being first duly sworn say that I was an attorney for John W. Johnson in the action described in the foregoing petition and I am still such attorney for the purpose of this petition;

That I have prepared and verified this petition for and in behalf of the said John W. Johnson who is not a resident of Douglas County, Oregon, so as to make this verification at this time.

That the foregoing petition is true as I verily believe.

O. P. COSHOW.

Subscribed and sworn to before me this 27 day of June, 1911.

E. H. LENOX,

County Clerk.

By Carl E. Wimberly, Deputy.

[Seal.]

Endorsed as follows:

No.

In the Circuit Court
of the State of Oregon
for the County of Douglas.

JOHN W. JOHNSON,

Plaintiff.

vs.

AARON JOHNSON and ELINE ENGEBRITSON,
Defendants.

Petition for correcting clerical
error in judgment.

Filed June 27, 1911.

E. H. LENOX,
Clerk.

By Carl E. Wimberly, Deputy.
From the law office of
COSHOW & RICE
Attorneys for Plaintiff
Roseburg, Oregon.

STATE OF OREGON,
County of Douglas—ss.

I, E. H. LENOX, County Clerk of the above named county, and ex-officio clerk of the circuit court for said County, do hereby certify that the foregoing copy of Petition, has been by me compared with the original, and that it is a transcript thereof and of the whole of such original Petition as the same appears on file in my office, care and custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 9th

day of March, A. D., 1912.

[Seal.]

E. H. LENOX,

Clerk.

By Blanche Reed, Deputy.

Filed Mar. 15, 1912.

A. M. CANNON,

Clerk U. S. District Court.

[Defendants' Exhibit B.]

*In the Circuit Court of the State of Oregon
for Douglas County.*

Be It Remembered that at a regular term of the Circuit Court of the State of Oregon for Douglas County, begun and held in the court room at the court house in Roseburg, Oregon, on Monday the 22nd day of May, 1911, at which were present:

Hon. JOHN S. COKE,

Judge.

GEO. M. BROWN,

Pros. Atty.

E. H. LENOX,

Clerk.

GEO. K. QUINE,

Sheriff.

Among other proceedings the following was had on Thursday the 29th day of June, 1911, being the thirteenth judicial day of the term to wit: Judge J. W. Hamilton, Presiding.

JOHN W. JOHNSON,

Plaintiff,

vs.

AARON JOHNSON and ELINE ENGBRITSON,
Defendants.

JUDGMENT.

This cause coming on to be heard upon the petition of the plaintiff, John W. Johnson, for the correction of a clerical error in the judgment heretofore, to wit: on the 16th day of May, 1908, duly rendered and entered in the above entitled court and cause in favor of the above named plaintiff and against the above named defendants to recover the sum of \$315.00 with interest thereon at the rate of 8 per cent per annum from the said 16th day of May, 1908, and the sum of \$30.00 attorney's fees and plaintiff's costs and disbursements taxed at \$14.50 the plaintiff appearing by O. P. Coshov of his attorneys and the defendants appearing not;

And it appearing to the satisfaction of the Court that on the 1st day of April, 1907, at the suit of the plaintiff John W. Johnson, a writ of attachment was duly issued by the clerk of said court directed to the sheriff of Douglas County, Oregon, under and by virtue of which writ of attachment the said sheriff did on the said 1st day of April, 1907, duly and regularly attach the Northwest quarter of Section Ten (10), Township twenty one (21) South, Range Seven (7) West, of the Willamette Meridian, in Douglas County, State of Oregon;

The said real property so attached was ordered to be sold and the said judgment entered in said cause on the said 16th day of May, 1908, but by a misprision of the clerk of this court in said judgment and

order of sale the date of that attachment of said real property was stated to be the 21st day of April, 1907, instead of the 1st day of April, 1907;

And it fully appearing to the satisfaction of the court that said error was clerical and should be corrected so as to state the truth and facts in regard to said attachment;

And it further appearing to the satisfaction of the court that the defendants were on the 16th day of May, 1908, jointly and severally indebted to the plaintiff in the sum of \$315.00 on a promissory note and such sum as attorney's fees as the Court should adjudge reasonable to be allowed plaintiff for instituting said action for the collection of said note and that the defendants each have been duly served with summons by publication by order of this court and have defaulted and said default was duly entered against them and each of them.

It is therefore, ordered, adjudged and considered that the plaintiff, John W. Johnson, have and recover off and from the defendants Aaron Johnson and Eline Engebritson and each of them the sum of \$315.00 with interest thereof at the rate of 8 per cent from the 16th day of May, 1908 and the further sum of \$30.00 attorney's fees and the further sum of \$14.50 plaintiff's costs and disbursements;

It is further ordered that the said real property attached in said action on the 1st day of April, 1907, and all of the right title and interest of the said defendants Aaron Johnson and Eline Engebritson or either of them in and to said property on the 1st day

of April, 1907, or at any time since, be sold in the manner prescribed by the law of this state for the sale of real property under execution and the proceeds of said sale be applied;

First: To the payment of the costs and expenses of said sale;

Second: To the costs and disbursements of this action including the amount allowed plaintiff as attorney's fees; and

Third: To the payment of the said sum so found due and owing from the defendants to the plaintiff, the sum of \$315.00 with interest at the rate of 8 per cent per annum from the 16th day of May, 1908, and that the overplus, if any, be paid to the clerk of this Court for the benefit of the defendants as their interests may appear, and that execution issue to enforce this judgment;

It is further ordered that this judgment be entered for and as of the 16th day of May, 1908.

(Record signed),

J. W. HAMILTON,

Judge.

Attest:

E. H. Lenox, Clerk.

Vol. 20 Page 345.

STATE OF OREGON,

County of Douglas—ss.

I, E. H. LENOX, County Clerk of the above named County, and ex-officio Clerk of the Circuit Court for said County, do hereby certify that the foregoing copy of Order has been by me compared with the orig-

inal, and that it is a transcript thereof and of the whole of such original Order as the same appears on record in my office, care and custody.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 9th day of March, A. D., 1912.

[Seal]

E. H. LENOX,

Clerk.

By Blanche Reed, Deputy.

Filed Mar. 15, 1912.

A. M. CANNON,

Clerk U. S. District Court.

[Defendant's Exhibit C.]

Sheriff's Deed of Execution.—No. 46.

Printed and for sale by Glass & Prudhomme, Portland, Or.

THIS INDENTURE, Made the tenth day of November, in the year of our Lord one thousand nine hundred nine, between B. Fenton, Sheriff of the County of Douglas, State of Oregon, the party of the first part, and John W. Johnson, of Hoquiam, Washington, the party.... of the second part,

WITNESSETH, that, whereas, by virtue of a Writ of Execution issued out of and under the seal of the circuit court of the State of Oregon, for the said county of Douglas, dated the fourteenth day of July, A. D., 1908, upon a judgment recovered in the said court on the sixteenth day of May, 1908, in favor of John W. Johnson, Plaintiff, and against Aaron Johnson and

Eline Engebritson, Defendants, to the said Sheriff directed and delivered, commanding him that out of the personal property of said judgment debtors in his County...., he.... should cause to be made certain moneys in the said Writ specified, and if sufficient personal property of the said judgment debtors could not be found, then he should cause the amount of said judgment to be made out of the real property belonging to said judgment debtors on the 21st day of April, A. D., 1907, or at any time afterwards.

AND WHEREAS, because sufficient personal property of said judgment debtors.... could not be found, whereof the said Sheriff could cause to be made the moneys specified in said Writ, the said Sheriff did, on the fourteenth day of July, A. D., 1908, in obedience to said command, levy on, take and seize all the right, title, interest and claim which the said judgment debtors so had to the lands, tenements, real estate and premises hereinafter particularly set forth and described, with the appurtenances, and did, on the twenty ninth day of August, A. D., 1908, sell all the right, title, interest and claim of the said judgment debtors in and to the said premises at public auction, in front of the Court House, in Roseburg, in said County of Douglas, between the hours of nine in the morning and four in the afternoon of that day, namely, at one o'clock P. M., after having first given due notice of the time and place of such sale according to law; at which sale all the right, title, interest and claim of the said judgment debtors in and to the said premises, were struck off and sold to the said party of the

second part for the sum of Three Hundred Eighty and 4/100 (380.04) Dollars, Gold coin of the United States of America, the said party of the second part, he being the highest bidder and that being the highest sum bid for the same, whereupon the said Sheriff, after receiving from the said purchaser the said sum of money so bid as aforesaid, gave to the said party of the second part such certificate of said sale as is by law directed to be given, and the matters contained in such certificate were substantially stated in said Sheriff's return of his proceedings upon said Writ, to the County Clerk of the said County of Douglas. And whereas, the said Court, by an order dated the twelfth day of October, 1908, confirmed said sale, and one year have expired since the confirmation of said sale by said Court without any redemption of the said premises having been made:

NOW THIS INDENTURE WITNESSETH, that the said B. Fenton, the Sheriff aforesaid, by virtue of the said Writ, and in pursuance of the statute in such case made and provided, for and in consideration of the said sum of money to him in hand paid as aforesaid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest and claim which the said judgment debtors Aaron Johnson and Eline Engebritson, or either of them, had on the said 21st day of April, A. D., 1907,

or at any time afterwards, or now have, in and to all that certain lot, piece or parcel of land, situate, lying and particularly described as follows, towit:

The North West quarter of Section 10, Township 21 South, Range 7 West, of Willamette Meridian, Douglas County, Oregon, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said premises, with the appurtenances, unto the said party of the second part, his heirs and assigns forever, as fully and absolutely as the said Sheriff can, may or ought to, by virtue of the said Writ, and of the statute in such case made and provided, grant, bargain, sell, convey and confirm the same.

IN WITNESS WHEREOF, the said Sheriff, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

B. FENTON, [Seal.]

Sheriff of the County of Douglas, Oregon.

Signed, Sealed and Delivered in the Presence of

R. T. Ashworth,

Andrew R. Markee,

STATE OF OREGON,

County of Douglas—ss.

On this 10th day of November, A. D., one thousand nine hundred nine, before me, Oliver P. Coshow, a Notary Public in and for said Douglas County, duly commissioned and sworn, personally appeared the within named B. Fenton, Sheriff of the County of

Douglas, State of Oregon, whose name is subscribed to the foregoing instrument as a party thereto, personally known to me to be the individual described in and who executed the said foregoing instrument, and acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal.]

OLIVER P. COSHOW,
Notary Public for Oregon.

2.00 Pd.

Indexed.

Compared.

John W. Johnson. Sheriff's Deed on Execution.
Dated, 1..... Recorded at the request of Coshow & Rice, Nov. 20, A. D., 1909, at..... minutes pastM., in 63 of Deeds, page 364.

E. H. LENOX,
Recorder of Conveyances.
By Deputy.

Filed Mar. 15, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 25 day of September, 1912, there was duly filed in said Court, a Petition for Appeal, in words and figures as follows, to wit:

[Petition for Appeal.]

*In the District Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,
Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,
Defendants.

To the Honorable Judge of the District Court of the
United States, for the District of Oregon:

The above named defendant, John W. Johnson, feeling himself aggrieved by the decree made and entered in this cause on the 17 day of April, A. D., 1912, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings, and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

And your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

MORGAN & BREWER,
JOHN VAN ZANTE,
Solicitors.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of Five Hundred (\$500.00) Dollars.

R. S. BEAN,

Judge.

[Endorsed]: Petition for Appeal. Filed Sept. 25, 1912.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 25 day of September, 1912, there was duly filed in said Court, Assignments of Error, in words and figures as follows, to wit:

[Assignments of Error.]

*In the District Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,

Plaintiff.

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

And now on this 25 day of September, A. D., 1912, comes the defendant, John W. Johnson, by his solicitors, Morgan & Brewer, and claims that the decree entered in the above cause on the 17 day of April, 1912, is erroneous and unjust to the defendant, because,

First. The Court erred in overruling the defendant's exceptions to the original bill of complaint for impertinence, for this, that the trial court was without jurisdiction to examine into the record of the Oregon Court in this collateral proceeding.

Second. The Court erred in overruling like exceptions to the amended bill of complaint of the plaintiff.

Third. The Court erred in holding that the requisite diversity of citizenship existed to entitle the Court to entertain jurisdiction, for this, that the plaintiff is a citizen of Minnesota, and the defendants are citizens of the State of Washington.

Fourth. The Court erred in authorizing this collateral attack upon the judgment of the Oregon Court and in holding that such judgment was open to collateral attack in this proceeding, for this, that while the Court and counsel concedes that the property was regularly seized by a court of competent and general jurisdiction which proceeded to judgment and sale, this Court would examine into the record of the Oregon Court and would hold that the Oregon judgment was void because one of the affidavits on which publication was made by plaintiff, was made before a Washington Notary Public, (this being one of several affidavits), and that therefore, this Court could and would set aside the judgment of the Circuit Court of Oregon.

Fifth. The court erred in holding that the affidavit of publication made by plaintiff before the Washington Notary Public, was an essential requisited to a valid order by the Circuit Court of Oregon for a

publication of summons, for this, that 1st, the Federal Courts will not investigate the record of a state court of general jurisdiction for defects and informalities, and 2nd, the presumptions are in favor of the judgment of the State Court, and the trial court was not authorized in assuming that the state court based its order entirely upon the defective affidavit made before the Washington Notary Public, and ignoring the sheriff's return "not found," and the other affidavits found in the record of the Oregon Court.

Sixth. The Court erred in finding in this collateral proceeding, that the affidavit, made before the Washington Notary Public, was a mere nullity, that an essential step was entirely omitted, and that the order of publication, based thereon, was ineffectual for any purpose.

Seventh. The Court erred in entertaining this collateral attack upon the judgment of the circuit court of Oregon, where the order for publication of summons recited, as it did in this case, that it appeared to the "satisfaction of the Court," that the defendants in that case were not residents of the State of Oregon, especially where the record shows other affidavits than the defective one, which the Court calls a nullity, were on file in said cause, and the Court erred in finding that an essential step was in fact entirely omitted, in view of the other affidavits on file before the Oregon Court, the sheriff's return, and the solemn finding of the Oregon Court.

Eighth. The Court erred in holding that the judgment of the Oregon Court was void, for two reasons,

1st, that the trial court should not, under the law with reference to federal courts, have entertained this collateral attack on such judgment, and 2nd, for the reason that the judgment was not, in fact, void, and would not have been so held by the state court in case of a direct attack.

Ninth. The Court erred in finding that the plaintiff was the owner in fee of the property involved in the action, and in holding that the defendant, John W. Johnson, was not such owner, and in quieting the title in favor of the said North Star Lumber Company, and against the said John W. Johnson.

Tenth. The Court erred in ordering that the deed, bearing date of the 20th day of November, 1909, executed by the sheriff of Douglas County to the defendant, John W. Johnson, be cancelled and held for nullity.

Eleventh. The Court erred in entering its decree for the plaintiff and against the defendant, John W. Johnson, quieting the title for the plaintiff and as against the defendant, John W. Johnson.

WHEREFORE, the defendant prays that the said decree be reversed, and the circuit court be directed to dismiss the bill for want of equity in the plaintiff as against the defendant.

MORGAN & BREWER,
JOHN VAN ZANTE,
Solicitors.

[Endorsed]: Assignment of Errors. Filed Sep. 25, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 14 day of October, 1912, there was duly filed in said Court, a Bond on Appeal, in words and figures as follows, to wit:

[Bond on Appeal.]

*In the District Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,

Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

KNOW ALL MEN BY THESE PRESENTS, that we, John W. Johnson as principal and Massachusetts Bonding & Insurance Company, as sureties, acknowledged ourselves to be jointly indebted to the North Star Lumber Co. and Herman Winters, appellless in the above cause in the sum of FIVE HUNDRED DOLLARS (\$500), conditioned that, whereas on the 17 day of April, 1912, in the Circuit Court of the United States for the District of Oregon, in a suit depending in that Court, wherein North Star Lumber Co., was plaintiff and John W. Johnson and Herman Winters were defendants, numbered on

Equity Docket as 3719, a decree was rendered against the said John W. Johnson, and the said John W. Johnson having obtained an appeal to the Circuit Court of Appeals of the Ninth Circuit, and filed a copy thereof in the office of the clerk of the court to reverse said decree, and a citation directed to the said North Star Lumber Co., and the said Herman Winters, citing and admonishing them to be and appear at a session of the U. S. Circuit Court of Appeals for the 9th Circuit, to be holden in the City of San Francisco in the State of California on the third day of February, 1913, next.

Now, if the said John W. Johnson shall prosecute his appeal to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, else to be and remain in full force and virtue.

JOHN W. JOHNSON,
MASSACHUSETTS BONDING & INSURANCE
COMPANY,

By Geo. R. Rodgers, Attorney in Fact.

By James H. Hart, Attorney in Fact.

Approved this 14th day of October, 1912.

R. S. BEAN,

District Judge.

[Endorsed]: Bond on Appeal. Filed Oct. 14,
1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 14 day of October, 1912, there was duly filed in said Court, a Citation on Appeal, in words and figures as follows, to wit:

[Citation on Appeal.]

UNITED STATES OF AMERICA,
District of Oregon—ss.

To the North Star Lumber Company, a Corporation,
Herman Winters and John Winters, Greeting:

WHEREAS, John W. Johnson, one of Defendants has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the Circuit Court of the United States for the District of Oregon, in your favor, and has given the security required by law; YOU ARE, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

GIVEN under my hand, at Portland, in said District, this 14th day of October, in the year of our Lord, one thousand, nine hundred and twelve.

R. S. BEAN,
Judge.

Due service of within Citation on Appeal is hereby

admitted at Portland, Oregon, this 14th day of October, 1912.

VEAZIE & VEAZIE,
Solicitors for Plaintiff.

[Endorsed]: Citation on Appeal. Filed Oct. 14, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on Tuesday, the 12 day of November, 1912, the same being theJudicial day of the Regular November, 1912, Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to wit:

[Order Enlarging Time to File Record.]

*In the District Court of the United States for the
District of Oregon.*

NORTH STAR LUMBER COMPANY, a corporation,

Plaintiff,

vs.

JOHN W. JOHNSON, HERMAN WINTERS and
JOHN WINTERS,

Defendants.

No. 3719.

November 12, 1912.

Now, at this day, for good cause shown, it is ORDERED that the defendant's time for filing and docketing the record on appeal in this cause in the United

States Circuit Court of Appeals, Ninth Circuit, be and the same hereby is enlarged and extended to and including December 31, 1912.

R. S. BEAN,
Judge.

